Supreme Court, U.S.
FILED
NOV 5 1993
OFFICE OF THE CLERK

93-713

CASE NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1993

GARY G. GRAHAM,
Petitioner,

versus

THE FLORIDA SUPREME COURT, and THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO
THE FLORIDA SUPREME COURT

APPENDIX
VOLUME SIX

Michael L. Kinney *
3128 West Kennedy Blvd.
Tampa, FL 33609-3093
(813) 878-5445

Gary G. Graham
407 Courthouse Square
Inverness, FL 34450
(904) 637-2637

*Counsel for Petitioner

PUBLISHER'S NOTE :

ORIGINAL PAGINATION IS NOT CONTINUOUS.

INDEX TO APPENDIX

Document	Description	Page
	VOLUME SIX	
44	Excerpts from Third Memorandum of Law In Support of Second Amended Motion to Dismiss	994
45	Excerpts from Answer, Counter-claim and Demand for Jury Trial	1053
46	Excerpts from Memorandum of of Law in Support of Fourth Amended Motion to Dismiss	1063
47	Excerpts from Petitioner's Show Cause Response	1070
48	Transcript of *State v. Douglas*	1087
49	Transcript of the Testimony of Kim Amann	1109
50	Pages 179-183 of Petitioner's Show Cause Response	1121
51	Excerpts from Transcript of the Proceedings	1128
52	Excerpts from Transcript of the Proceedings (*State v. Billy Dobbs Page*)	1132

DOCUMENT 44

Excerpts from
Third Memorandum of Law
in Support of
Second Amended Motion to Dismiss

Note: Excerpts of the Second Amended Motion to Dismiss which is supported by this memorandum is located at Page A 330 of the Appendix.

BEFORE THE FLORIDA JUDICIAL
QUALIFICATIONS COMMISSION

INQUIRY CONCERNING A

JUDGE, NO. 91,415

HONORABLE GARY G. GRAHAM

CITRUS COUNTY COURT JUDGE

_____/

THIRD MEMORANDUM OF LAW IN SUPPORT OF SECOND MOTION TO DISMISS

Comes now the Respondent and files this his Third Memorandum of Law in Support of Second Amended Motion to Dismiss.

Hereinafter Respondent will refer to the Exhibits as (Ex x, P y, L z), meaning see Exhibit x, at Page y, Line z.

* * *

- PAGE 7 -

AS TO ALL GROUNDS

The Florida Judicial Qualifications Commission shall be hereinafter referred to as the "JQC" or the "Commission".

* * *

A "fair trial in a fair tribunal is a basic requirement

- PAGE 8 -

of due process." In Re Murchison, 349 US 133 (1955). This applies to administrative agencies which adjudicate as well as to courts. Gibson v. Berryhill, 411 US 564 (1973).

The United States Supreme Court has stated that, "Not only is a biased decision maker constitutionally unacceptable but our system of law has always endeavored to prevent even the probability of unfairness." Murchison at 136.

The JQC is a thirteen member appointed Commission composed of:

> (1) Two judges of district courts of appeal selected by the judges of those courts, two circuit judges selected by the judges of the circuit courts and two judges of county courts selected by the judges of those courts;
>
> (2) Two electors who reside in the state, who are members of the bar of Florida, and who shall be chosen by the governing body of the bar of Florida; and
>
> (3) Five electors who reside in the state, who have never held judicial office or been members of the bar of Florida, and who shall be appointed by the governor.

Florida Constitution, Article 5, Section 12.

There is no prohibition against commissioners who are one of the "five electors" being representatives of the news media. Respondent fears some members may be representatives of the news media. However, as the statement of facts points out, the JQC will not allow the Respondent to determine if this is true.

The JQC has created by the Florida Constitution acts as the prosecution, judge, and jury in the prosecution of

judges for alleged unethical conduct in the State of Florida. Florida Constitution, Article 5, Section 12; Florida Judicial Qualifications Commissions rules (hereinafter FJQCR) R6 through R12.

Its investigative hearings are secret. FJQCR, R6(b); R24.

"The Judge has no right to be present or to be heard during an investigation, . . ." FJQCR, R6(b). Furthermore, there is no provision in Florida law or procedure preventing anyone at any time from approaching members of the Commission and discussing with them complaints about a respondent judge.

The JQC rules on issues of law and evidence, hears the evidence and determines the facts, and then recommends a determination to the Florida Supreme Court which is the final arbiter of the respondent judge's fate. FJQCR, R21.

The JQC may recommend reprimand or removal of the judge upon a vote of 9 of its members. Florida Constitution, Article 5, Section 12. A reprimand has been characterized as a "humiliation"

of the judge. In re Damron, 487 So.2d 1, 7 (1986). Removal is equivalent to the impeachment of the judge, a duly elected public official in the State of Florida. (All judges in Florida hold contested elected positions or are subject to elections for merit retention. Respondent Graham has been twice elected to the County Court of Citrus County.)

- PAGE 10 -

The Florida Supreme Court as final arbiter does not hear the evidence or witness the testimony. Reprimand or removal of the respondent judge is accomplished by a simple majority vote of four of the seven-justice court. Thus by the vote of only 13 individuals an elected public official in the State of Florida through an administrative procedure can be publicly humiliated or impeached.

During the first 15 years of its existence this simplified procedure was used with great caution resulting in the filing of formal charges against only 18 judges, an average of approximately one formal charge per year.

However, during the last 11 years the political appointees on this Commission have pursued their duties with a marked increase

in zeal. Since 1983 the Commission has formally charged 55 judges, an average of more than five judges per year.[1]

---

[1] HISTORY OF JQC FORMAL CHARGES
(Information supplied by Clerk of the Florida Supreme Court as of September 124, 1992.)

FIRST FIFTEEN YEARS			LAST ELEVEN YEARS		
Year	Judge	Case No.	Year	Judge	Case No.
1967	Kelly	38,595	1982	Cooper	61,847
1968	None		1983	Gobbie	64,052
1969	None			Leon	63,554
1970	None			Merckle	63,555
1971	None			Merckle	63,556
1972	None			Speiser	64,077
1973	Rose	43,619		Stancil	63,885
1974	Boyd	46,601	1984	Byrd	66,019

(Continued on Next Page)

(Continued)

	Dekle	46,599	1985	Block	67,298
	Dekle	46,600		Defoor	67,595
	Falck	46,101		Damron	67,151
	Stikelether	45,353		Defriest	66,806
1975	None			Muszynski	66,876
1976	Gale	49,062		Tyler	67,895
	LaMotte	49,429	1986	Kay	69,672
	LaMotte	49,982		Pratt	69,671
	Lee	49,428		Berkowitz	69,673
	Lee	49,929		Baker	69,674

A 1000

1977	Malmquist	51,961
	Smith	51,908
1978	Crowell	54,200
1979	Shearer	55,947
1980	Courtney	59,776
	Lanty	59,489
	Lanty	59,866
1981	Gridley	60,182
	Turner	61,218
	Byrd	69,675
	Eastmore	69,745
1987	Clayton	70,006
	Kerr	70,961
	Sanderlin	71,196
	Sturgis	71,263
	Kirwin	71,394
1988	Kilbride	73,172
1989	Hayes	73,502
	Tye	74,120
	Carnesoltas	75,204
	Capua	75,203
1990	Gale	76,106
	Zack	76,570
	Norris	76,732
	Meyerson	76,887
	Leffler	77,060
	Turner	77,087
1991	Trettis	77,431
	Gelber	77,717
	Perry	77,647
	Fowler	77,929
	Spencer	78,098
	Glickstein	78,288
	Carr	78,288
	Davis	78,747
	Shenberg	78,748
	Sepe	78,749
	Perry	78,927
1992	Santoro	79,206
	Shenberg	79,436
	Santoro	79,817
	Marko	79,247
	Bryson	79,818
	Graham	80,273
	Garrett	80,424
	Elwell	80,440
	Perry	80,457

By comparison during the entire 147-year history of the State of Florida, only 10 Articles of Impeachment have been passed by the Florida Legislature. Florida State Law Review, Volume 6, page 2, at p 17-29.

The prefact of the Florida Code of Judicial Conduct adopted by the Supreme Court of Florida, among other things, provides:

> This Code, with minor modifications to adapt it to our Florida judicial system, is adopted by the Supreme Court of Florida to supersede the Canons of Judicial Ethics. The Code, consisting of statement norms, denominated canons, and the accompanying text setting forth specific rules, states the standards that Judges should observe, and these are mandatory unless otherwise indicated. The commentary is included for purposes of construction and understanding. Under Section 12(a), Article 5 of the Florida Constitution, the Judicial Qualifications Commission is charged with the responsibility of enforcing these standards.

It is apparent that the Code of Judicial Conduct sets out the only standards for the conduct of judges in this State. For a judge to be guilty of misconduct, his conduct must necessarily violate the Code.

The Florida Code of Judicial Conduct provides among other things that:

CANNON 1

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and **enforcing**, and should himself observe, **high standards of conduct** so that the integrity and independence of the judiciary may be preserved. The provisions of this code should be construed and applied to further that objective. (Emphasis added.)

CANON 2

A. A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

CANON 3

A. Adjudicative Responsibilities.

(1) A judge should be faithful to the law and maintain professional competence in it. **He should be unswayed by partisan interests, public clamor, or fear of criticism.**

(2) A judge should maintain order and decorum in proceedings before him;

(3) A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom he deals in his official capacity, and **should require similar conduct of lawyers, and of his staff, court officials, and others subject to his direction and control.**

> (4) A judge should accord to every person who is legally interested in a proceeding, or his lawyer, full right to be heard according to law, and, except as authorized by law, neither initiate nor consider ex parte or other communications **concerning a pending or impending proceeding.** A judge, however, may obtain the advice of a disinterested expert on the law applicable to a proceeding before him if he gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond. (Emphasis added.)

Thus the Florida Code of Judicial Conduct requires a judge to actively control the conduct of others under his control (including attorneys) to make sure that the proceedings are orderly, and to promote public confidence in the judiciary.

He must do so without regard to public clamor or

criticisms.

AS TO GROUND ONE

FIRST DUE PROCESS ARGUMENT

Where the investigative and adjudicative functions of an administrative hearing panel are combined, it is not an unconstitutional violation of the procedural due process of the Federal Constitution unless under a realistic appraisal of psychological tendencies and human weakness, conferring investigative and

adjudicative powers on the same individuals poses such a risk of actual bias or prejudgment that the practice must be forbidden. Withrow v. Larkin, 43 L.Ed.2d 712, 717 (1975).

In that case a doctor complained that he did not think it was fundamentally fair to have his prosecutors also try him. In ruling against him the United States Supreme Court stated that in the combination of investigative and adjudicative function **without more** does not constitute a due process violation. Withrow at 58.

The Court also stated that, "Of course, we should be alert to the possibilities of bias that may lurk in the way particular procedures actually work in practice." Withrow at 51. (Emphasis added.)

The State of Wisconsin Statutes involved at the time Withrow was decided are as follows:

* * *

- PAGE 18 -

There are several significant differences between the Wisconsin statutory procedure for control of doctors upheld in Withrow v. Larkin and the procedure for removal of judges as provided by its

constitution and the Florida Judicial Qualifications Commission Rules as promulgated by the Florida Supreme Court.

Item One:

The medical board in Withrow had the authority to temporarily suspend Doctor Larking for a maximum of six moths. §448.18 (7), Wis. Stat. Under the Florida scheme the Florida Supreme Court and its "arm" and "intermediate agency" not only investigate, prosecute, try, and review proceedings against a judge but also have the authority to permanently remove him from his elected term of office. Florida Constitution, Article 5, Section 12.

Item Two:

Under Wisconsin's procedure the medical board in order to obtain the revocation of a doctor's license had to complain to the district attorney who in turn had to bring a civil action in circuit court. §448.18 (2), Wis. Stat. Thus the medical board could not investigate, prosecute, try, and then revoke a doctor's license. The ultimate decision for

revocation rested not only in the purview of an independent agency but indeed a separate branch of government.

By comparison, under the Florida procedure the same branch of government and the same agency (the Florida Supreme Court and its arm and intermediate agency, the JQC) investigate, prosecute, try, and then remove judges from their elected terms of office.

Item Three:

Under Wisconsin procedure the doctor has a right to demand a jury trial on the issue of revocation, §448.18 (2), a fundamental guarantee of fairness not available to Florida judges subject to formal charges by the JQC.

Item Four:

Wisconsin's procedure provides a sanction against those who file willful and malicious accusations against doctors by the assessment of court costs against them. §448.18 (2) Wis. Stat. Florida procedure not only fails to sanction willful and malicious complaints but also cloaks them in an absolute veil of secrecy which continues through and even after the proceedings are over.

Item Five:

The individuals who are subject to the Wisconsin procedure are not elected public officials; they are doctors. The licenses

granted by the board of medical examiners can be taken away by that same board (albeit after complaint and jury trial). Surely the disfranchisement of the public from

the benefit of keeping its elected officials should require a procedure with even greater safeguards of fundamental fairness. Absurdly enough, it is easier to remove an elected judge in the State of Florida than to revoke the license of a doctor in Wisconsin.

Furthermore, the fact that judges are elected public official subjects the entire removal procedure to political motivation and pressure not present in the revocation of professional licenses. The Respondent concedes that the revocation of a doctor's license has a minute marginal benefit to other doctors inasmuch as it removes one of the thousands of doctors who practice medicine from competition.

However, when an elected public official is removed from office it makes vacant a position to be filled by his political enemies and others who want his job. Furthermore, an elected public official routinely engenders animosity from the press and

other politicians, a circumstance that is rare to the professional practices.

In the instant case Mr. Horn, the Judge's immediate past political opponent who was defeated at the polls, has publicly squabbled with another politician over who filed what complaint first and who should receive the credit for getting Judge Graham (Exhibit 115).

Horn has also publicized the filing of several JQC complaints which failed to result in formal charges (See Ex 141) and is directly involved in four of the formal charges

filed including instances where the Judge admonished him for abandoning his clients on appeal and pursuing frivolous appeals.

Another formal charge involves the client of Mr. Ken Travis who announced his plans to run against the Respondent Judge in open court during a sentencing hearing (See Ex 142).

Respondent is well aware of the argument made that it doesn't matter who makes a complaint but only if it is true. The glaring fault in this reasoning is that many of the formal charges involve disputed issues of fact.

When political opposition and ambition are the driving force behind accusations it is also a driving force behind twisted memories, distorted facts, and just plain lies.

Furthermore, the triers of fact under the Wisconsin procedure are not politicians subject to being pressured by the press. Almost half of the Commission under the Florida procedure is made up of elected public officials. All of the members of the Florida Supreme Court are elected public officials. As such they are naturally interested in maintaining a favorable press image for the safety of their own elected positions.

Brad King understood this when he sent the Commission copies of unfavorable news editorials and articles (See Ex 132). Brooke Kennerly, the commission's Executive Secretary, understood this when she answered questions for the press identical to those the Commission refused to answer for the

Respondent.

It does not matter that the Respondent is the victim of what has been described as "attack" journalism, a trend in the American press which has caused even journalist Carl Bernstein to conclude

has turned the press, the media, the politicians, and even the people into a sewer (See Ex 143).

The politicians on the Commission know that the press is on a feeding frenzy with respect to the Respondent Judge. They have no politically accepted alternative than to find him guilty. If they don't, the sharks will turn on them. They will have to get the Judge, otherwise the press will get them.

Under these highly charged political circumstances surely the State and Federal Constitutions require more than nine members of a politically appointed committee and four concurring elected members of an appellate court to insure a fundamentally fair forum for the determination of the facts of the case.

Respondent is unconcerned about what he has done. He is very concerned that a committee of zealots subjected to political pressure applied by the newspapers and responding to complaints by his political opponents will remove him from office for what he has **not** done by the simple expediency of saying, "Well, we don't believe the Judge and we do believe his opponents." That's not fair and it is not due process.

Item Six:

Under the Wisconsin procedure the Board of Medical Examiners does not include individuals whose interests are inherently inimical to the doctors under investigation. The Wisconsin Medical Examining Board is composed of eight doctors and two lay persons. It would be unusual for a doctor under investigation to have an interest adverse to any member of the board either directly or by philosophy.

By contrast under the Florida procedure for removing judges the JQC is composed of two county judges, two circuit judges, two appellate judges, two lawyers, and five lay persons who may be members of the press and all of whom are prominent political appointees. A judge is constantly placed in a position adverse to the groups represented by these individuals. The judge not only may but must under the Florida Code of Judicial Conduct reprimand and control attorneys before the court. County judges are also often inherently at odds with the circuit judges over work related issues and administrative decisions and of course are subject to reversal for error or abuse of discretion by the appellate judges.

A review of the formal charges in this case pointedly illustrates the problem.

Charge 1A involves the Judge admonishing a small number of the Citrus County Bar for improper conduct in court.

Charge 1B involves the Judge stating that attorneys and doctors had in the past received special treatment.

Charge 1D involves the Judge accurately reporting a specific case of favoritism toward the daughter of a politically prominent individual.

Charge 1E involves the Judge requiring an attorney to explain why a felony offense was being tried in misdemeanor court.

Charge 1F involves the question by the Judge if ex parte communication had been made between the State Attorney and the Chief Judge for the Fifth Judicial Circuit (later the Administrative Circuit Judge for Citrus County would admit it was he instead).

Charge 1H involves the Judge reprimanding a public defender for falsifying a record and pointing out an appellate judge had written a dissenting opinion based on the false record.

Charge 3A involves untrue allegations by an attorney that the Judge told her to sit down, shut up, and tell your clients they don't need you.

Charge 3C involves reprimanding an attorney for abandoning his clients.

Charge 3D involves reprimanding an attorney for frivolous appellate work which wasted his client's time and money.

Charge 4A involves the Judge's communication to the local attorneys stating that the Judge would not accept negotiated pleas from those who challenged his method of

discussing them.

Charge 4B involves the Judge's statement that he did not owe an attorney any favors in court.

Charge 4D involves the Respondent reviewing at first appearance a bond set by Circuit Judge Thurman, the same individual the Respondent Judge had formally complained of for exercising improper jurisdiction over county court cases and for saying chicken sit in circuit court.

Charge 5A involves the Judge's refusal to participate in a nonpublic meeting in the presence of a news reporter.

In summary the Respondent Judge who is falsely accused of unethical conduct involving his rightful control and criticism of the misconduct of attorneys, circuit judges, appellate judges, newspapers, and influential individuals is now asked to submit the determination of the **facts** of his case to attorneys, circuit judges, appellate judges, influential political appointees, and possibly even newspaper people.

To be tried by a group of individuals who refuse to be voir dired and who represent groups with inherently adverse interests is fundamentally unfair and a denial of due process.

Compounding the problem even further is the **combination** of politics and the inherent conflicts a judge faces with respect to these various groups. For example, Justice Rosemary Barkett of the Florida Supreme Court is currently

under a serious challenge for merit retention. She has been the object of a vigorous and well-organized attack for what some

citizens including six state attorneys and several police chiefs and sheriffs consider an overly liberal judicial philosophy.

To the rescue comes now the President of the Florida Bar Association who issues a public statement defending Justice Barkett (Ex 147). Respondent sincerely hopes that he does not offend Justice Barkett or distress any other members of the Florida Supreme Court when he says that it is fundamentally unfair for Justice Barkett to be asked to decided whether or not Judge Graham has acted correctly in his bitter battle with the deplorable local bar.

Furthermore, the example shown to the other justices by this close political cooperation between the organized bar and the Florida Supreme Court puts each justice of the Florida Supreme Court in a similar position. The message is clear. Be good to the organized bar; they may be your savior in your next election for merit retention.

It is unfair for a groups of seven elected public officials who may need attorneys for political support to make the ultimate determination of whether or not the Respondent has correctly admonished various miscreant attorneys in the Citrus County Court.

Item Seven:

Under the Wisconsin procedure the medical board's

investigative hearings were closed to the public. But Dr. Larking ". . . and his attorney were permitted to be present throughout and in fact his attorney did attend the hearings and knew the facts presented to the board; . . ." Withrow v. Larkin, 43 L.Ed.2d 712, 717 (1975).

Under the Florida procedure prior to formal charges being filed the JQC engages in secret ex parte meetings at which secret complaints against a judge are discussed. These discussions and the facts presented to the Commission remain secret even after formal charges are filed. Thus at trial the judge under investigation is only allowed to respond to that which is voluntarily disclosed by the Commission. Undisclosed facts which may impeach the judge's credibility remain unknown and unanswered by the respondent judge and sit like poison in the minds of the trier of fact.

While the effect of this secrecy is bad enough in the individual case, its cumulative effect is intolerable. As stated in his

motion the Respondent Judge is aware through admissions by his opponents and by informal contacts by the JQC that he has been the subject of numerous false charges over many years (See Ex 141, 140, and 115, p 46 1 21).

Imagine this scenario. Twelve complaints are filed against the judge over a six-year period. Every six months the Commission hears a new complaint and discusses it in secret. However, on each occasion the Commission determines by a vote of 11 to 13 that the charges are unfounded. Thus

every six months with two members of the Commission believe the judge has engaged in unethical conduct saved only by the foolish votes of the other members.

Conceivably by the end of six years, even giving consideration for rational replacement of commissioners, every member of the Commission might believe that the judge had wrongfully "escaped" sanctioning by the Commission.

Then when the Commission finally agrees on filing formal charges the judge is faced with a group of individuals who are highly biased and antagonistic. Furthermore, since their bias is

based on past noncharged conduct, it is unlikely that it will surface as relevant to the judge's current trial despite the fact that these secret unanswered communications have poisoned the minds of the commissioners against the judge.

This procedure is the legal equivalent of playing Russian roulette with the judge's credibility. Keeping the prior communications concerning the judge secret prior to filing formal charges might be defensible. Keeping them secret after the filing of formal charges is fundamentally unfair and unconstitutional.

Item Eight:

Under the Wisconsin procedure there was no independent indication that bias was actually at work in practice.

Under the Florida procedure and particularly with

respect to Respondent Judge there have been several obvious indications of bias against the Respondent Judge.

After the initial filing of a Notice of Investigation the Judge was given only three weeks to respond to eight charges of misconduct relating back to incidents some three years in the past and

requiring the difficult transcription of electronic court reporting tapes.

His motion for a continuance was summarily denied without notice or a hearing and despite the fact that his attorney, a former Chairman of the JQC, had indicated that motions of this nature were routinely granted.

After reviewing his motion for a continuance in person, the Commission granted his motion but only for the stated purpose of piling more charges on the Judge.

When the Judge requested a six-hour hearing to respond to eight charges, the Commission replied by allowing him three hours to respond to the original eight charges plus twenty-five additional charges, roughly five and one-half minutes per charge.

When the Respondent Judge appeared he was not allowed to bring an assistant and was quickly admonished not to waste the Commission's time and was not allowed a few minutes to prepare a seating chart.

Respondent was then told how he would present his case despite the fact that the Commission's own rules provide for the presentation of a written or oral statement or both at

the Judge's discretion.

The Commission would not introduce the professions of two of its members even though it made known the profession of the other eleven.

It refused to answer a direct question by the Judge if any member had experience in or was related to the newspaper business. Yet when subsequently asked the same question by a newspaper reporter and the President of the Citrus County Bar Association the Executive Director responded, thus proving the Commission's sensitivity to pressure from the press and the organized bar.

The Commission further refused to answer a short series of questions regarding some very fair and fundamental issues regarding their impartiality to try the case.

The Commission refused to answer a question regarding its position on whether or not the Judge could publicly respond to the premature disclosure of the investigation of one of his political opponent for violating the Commission's own rules of confidentiality.

The Commission also attempted and to some degree succeeded in putting one-side arguments into the record. It did this by allowing a commissioner to make a factual comment and an incorrect argument concerning ex parte communications and then silenced the Judge's response.

After the Respondent's first Rule 6(b) hearing the

Commission set an October 10 deadline for Respondent to file a requested Second Memorandum of Law (Ex 144).

On October 1, 1992, the Commission knowing full well that Respondent was preparing a complicated Second Memorandum of Law in support of a 59-page Motion to Dismiss filed a Supplemental Notice of Investigation alleging 14 additional charges of misconduct including a complaint about a decision upheld on appeal and the Judge's criticism of an attorney for wearing a leather disco jacket to an official court proceeding.

Respondent was allowed only 13 working days to prepare for the Rule 6(b) hearing on 14 additional charges dating as far back as five years and requiring the difficult transcription of electronic court reporting tapes.

Respondent was also allowed only three hours for this hearing. Thus if he talked nonstop for three hours he was given less than 13 minutes per charge to present his case.

Respondent's Motion for a Continuance (Ex 145) was summarily denied without notice or hearing (Ex 146).

Finally, two members of the Commission have admitted they were biased and recused themselves from the case.

The conduct of the Commission in this particular case has not evinced a desire to impartially determine the delicate issues of fact involved but rather an obvious desire to put the Respondent Judge in his place as quickly as

possible and to shut his mouth forever against his criticism of a sick small county legal system.

CONCLUSION

GROUND ONE - FIRST DUE PROCESS ARGUMENT

The United States Supreme Court has held that combining the investigative and adjudicative functions without more does not constitute a due process violation unless under a realistic appraisal conferring the investigative and adjudicative powers with one

agency poses such a risk of actual bias or prejudgment that the practice must be forbidden. Withrow v. Larkin, 421 US 35, 47, 58 (1975).

The Court also held that we should remain alert to the possibilities of bias in the way any particular procedure actually worked.

There is much more going on in the Florida procedure for removing elected judges in the State of Florida than in suspension of doctors in the State of Wisconsin.

The Florida procedure involves politicians representing inherently adverse interest and subject to political pressure from the press trying other politicians. It involves one arm of a single agency investigating in total secrecy and then prosecuting and trying the facts of the case.

It is rife with possibilities of abuse by the submission of twisted, distorted, and untrue evidence based on the political ambitions of the judges' opponents and those who

have lost their cases or gone to jail as a result of his decision.

It has no provisions for sanctioning or discouraging false claims and does not require a jury trial.

Furthermore, a reading of this record reveals an obvious working of bias in the particular procedure for removing judges in the State of Florida.

Accordingly, the Florida procedure by combining the investigative and adjudicative functions in one agency violates the State and Federal due process rights of the elected judges in the State of Florida. The Commission is therefore an unconstitutional body lacking jurisdiction over the Respondent Judge and the charges against him should be dismissed.

AS TO GROUND ONE

SECOND DUE PROCESS ARGUMENT

Under the Wisconsin procedure the constitutionality of the board to investigate, prosecute, and try complaints against Dr. Larkin was limited to the facts of the case wherein the ultimate decision was whether or not the Doctor should be further prosecuted by the District Attorney at a civil or criminal jury trial.

With regard to this limited decision the United States Supreme Court upheld the constitutionality of the board investigating, prosecuting, and ultimately deciding the case.

- PAGE 34 -

With regard to this limited decision the board was the ultimate arbiter of the facts and conclusions of the case subject only to review for abuse of discretion pursuant to Ch. 227, Wis. Stat.

However, under the Florida procedure for removing judges while the findings of the Commission are given "great weight", the ultimate responsibility of making a determination rests with the Florida Supreme Court who may accept the Commission's findings and recommendations or may "wholly reject" them. In re Kelly, 238 So.2d 565.

The due process problem with this procedure is the fundamental unfairness of having the individuals on the Florida Supreme Court determine the ultimate facts without personally hearing the testimony of those involved.

In the State of Florida jurors in civil cases are instructed as follows:

BELIEVABILITY OF WITNESSES

a. General considerations

In determining the believability of any witness and the weight to be given the testimony of any witness, you may properly consider the demeanor the witness while testifying; the frankness or lack of frankness of the witness; the intelligence of the witness; any interest the witness may have in the outcome of the case; the means and opportunity the witness had to know the facts about which the witness testified; the ability of the witness to remember the matters about which the witness testified; and the reasonableness of the testimony

of the witness, considered in the light of all the evidence in the case and in the light of your own experience and common sense.

Florida Standard Jury Instructions in Civil Cases, Instruction 2.2.

Jurors in criminal cases are given the following similar instructions (emphasis added):

It is up to you to decide what evidence is reliable. You should use your common sense in deciding which is the best evidence, and which evidence should not be relied upon in considering your verdict. You may find some of the evidence not reliable, or less reliable than other evidence.

You should consider how the witness acted, as well as what they said. Some things you should consider are:

1. Did the witness seem to have an opportunity to see and know the things about the which the witness testified?

2. Did the witness seem to have an accurate memory?

3. Was the witness honest and straightforward in answering the attorney's questions?

4. Did the witness have some interest in how the case should be decided?

5. Does the witness' testimony agree with the other testimony and other evidence in the case?

If the Florida Supreme Court is going to ultimately decide the facts of the Respondent Judge's case, it is only fair that they hear the testimony of the witnesses and conduct the trial. The review of a cold transcript does not

allow them to consider the very important matters of credibility with respect to how the witness acted as well as what they said and whether or not the witness was honest and straightforward in answering questions.

Any judge who has conducted a nonjury trial will appreciate the crucial importance of actually seeing and hearing the witnesses

in determining who is telling the truth. Indeed, the superior advantage of the trier of fact is the reason appellate courts give enormous deference to the findings of fact made by trial judges and forms the basis for instructing the jurors that they may believe or disbelieve all or any part of the evidence or testimony of any witness. Such findings will be overturned only where they are clearly erroneous. Anderson v. City of Bessemer City, NC, 470 US 574, 575 (1985).

Under the Florida procedure for removing elected judges from public office, the Florida Supreme Court as the ultimate arbiter of fact does not see or hear the testimony of the Respondent or his detractors.

The Respondent Judge is confident that the Florida Supreme Court would believe him and not his political opponents if they only had the opportunity to see them squirm as they give their false, vindictive, and untrue testimony. However, he is equally confident that the JQC as it is currently impaneled will believe them not him.

Fundamental fairness requires those who will decide the truth to hear the testimony.

Respondent would bring to the Commission's attention the report of a United States Senate debate concerning a proposed Senate rule to allow a subcommittee to try articles of impeachment brought against Judge Harold Louderback. The debate on the rule revealed considerable doubt about its constitutionality. Echoing the demand for live testimony during the Louderback trial, Sen. Hiram Johnson insisted that:

> "(A) trial of the questions of fact . . . depends quite as much upon the witnesses who are called, their appearance on the stand [and] their mode of giving testimony." 78 Cong. Rec. 9432 (1934). Johnson asked whether in "a matter of such grave concern the importance, it is well for us to indulge in a trial, as it were, vicarious in character, which really will be conducted by a committee?" Senator Borah of Idaho went further, stating that "the Senate is the body which tries the respondent, not a subcommittee or a committee of the Senate; and therefore the respondent would be entitled to a full trial in every respect before the entire Senate if he should ask for it." 78 Cong. Rec. 9928 (1934); see also id. at 9929 (remarks of Sen. Fletcher).

Nor is a commission summary or "recommendation" of the evidence an adequate substitute for hearing the witnesses. Any summary is necessarily the product of editorial judgements. Furthermore, no report can provide the demeanor evidence essential

to evaluating conflicting testimony. As James Wilson remarked, jurors "hear everything that is

alleged; they not only hear the words, but they see and mark the features of the countenance; they can judge the weight due to such testimony." Documentary History of the Ratification of the Constitution, (M. Jensen ed. 1976), at 573; accord, e.g., Universal Camera Corp. v. National Labor Relations Bd., 340 U.S. 474, 495-96 (1951); United States v. Nelson, 476 F.2d 254, 256 (9th Cir. 1973); NLRB v. Dinion Coil Co., 201 F.2d 484 (2d Cir. 1952) (Frank, J.). One must see and hear the witness in order to evaluate credibility.

CONCLUSION

GROUND ONE - SECOND DUE PROCESS ARGUMENT

Because the individuals who ultimately decide the facts of respondent's case do not personally view or hear the evidence the Florida procedure involving the very important issues of the removal of elected public officials is a violation of State and Federal due process of law.

AS TO GROUND ONE

THIRD DUE PROCESS ARGUMENT

Due process of law does not deny fundamental fairness or shock the universal sense of justice. Kinsella v. United States, 361 US 234. It represents a realistic and reasonable evaluation of the respective interests of the parties involved under the circumstances of the particular case. Dobkin v. Chapman, 236 NE2d 451. It is "a law which hears before it condemns; which proceeds upon inquiry, and renders

judgement only after trial." Trustees of Dartmouth College v. Woodward, 17 US 518.

Due process requires that a person shall be allowed to be heard, that the determination be reasonable, and that the determination be free from the opportunity for arbitrary power. Noyes v. Erie & Wyoming Farmers Co-op, 10 NYS2d, rev'd on other grounds, 22 NE2d 334.

The requirements of due process frequently vary with the types of proceeding involved. Hannah v. Larch, 363 US 420. What procedures due process may require must begin with a

determination of the nature of the governmental function involved and the private interest affected. Fusai v. Steinberg, 419 US 379.

In this determination the courts must consider three factors: First, the interest that will be affected; second, the risk of any erroneous deprivation of that interest; third, the probable value of additional or substitute procedural safeguards; and, finally, the fiscal or administrative burdens that additional or substitute procedural requirements would entail. Mackey v. Montrym, 99 S Ct 2612.

A realistic evaluation of the Florida procedure for the removal of judges should shock the universal sense of justice.

A judge is required by the Florida Code of Judicial

Conduct with establishing, maintaining, and enforcing high standards of conduct in the court. Florida Code of Judicial Conduct, Canon 1. He must require lawyers to be patient, dignified, and courteous. Florida Code of Judicial Conduct, Canon 3. Accordingly, he must occasionally criticize lawyers and others in his court.

He angers a great many people each day he works. He puts people in jail, he takes away their driving licenses, he fines them money, and sometimes separates them from their spouse, children, or parents.

In Florida he is an elected official. Some envy him. Others are offended by his authority. Many want his job.

The invitation and encouragement for false claims of unethical conduct is overwhelming. Indeed the State of Florida which has approximately 800 judges receives almost 400 complaints each year (Ex 137).

The motivation for biased, prejudiced, and false testimony is equally great.

The judge is then faced with a procedure where 13 politicians and political appointees representing some of the very groups he must control and criticize investigate, prosecute, try and determine the truth of the complaints made against him. It takes only 9 members of this group to find him guilty.

The without personally hearing the evidence another

group of 7 elected officials by a majority vote of 4 members may remove the judge from office.

The procedure thus stated does not reasonably insure that it will hear before it condemns, proceed upon inquiry or render judgement only after trial. Indeed the conduct of the JQC in this particular case suggests that the JQC has already made its decision and that the Respondent has little if no chance of having his testimony believed.

This procedure does not provide for a reasonable determination of the facts and in conjunction with the vague rules of conduct which even the Committee on Standards of Conduct Governing Judges do not agree upon offers a ripe opportunity for arbitrary exercise of power.

Respondent suggests that if the State of Florida does not want to impeach its judges that at a minimum it should provide for a jury trial of the issues.

In suggesting this the Respondent looks first at the interest that is affected. The interest affected is the very serious business of removing elected officials from office and disenfranchising the citizens who voted for them in a free and democratic election.

Secondly, Respondent looks at the risk of an erroneous deprivation of the interest involved. In Wisconsin, the risk of an erroneous decision by the Board of Medical Examiners is the temporary suspension of a doctor's license for a maximum

of six months. In Florida an erroneous decision by the Florida Supreme Court and its "arm" and "intermediate agency," the JQC, is a denial of the people's right to elect the public official of their choice.

Thirdly, Respondent looks at the additional burden either fiscal or administrative which the additional or substitute procedural requirement would entail. Ironically, requiring a jury trial after a JQC recommendation (analogous doctor's license) would be less of a fiscal or administrative burden.

Instead of a trial involving the attention of 2 appellate judges, 2 circuit judges, and 2 county court judges which are all paid salaries greater than $80,000.00 a year, the jurors would be composed of citizens drawn from the jury pool and paid according to the rates provided by Statute.

CONCLUSION

GROUND ONE - THIRD DUE PROCESS ARGUMENT

When all circumstances are considered as a whole, the Florida procedure does not insure a fundamentally fair procedure free from the danger of arbitrary control.

The procedure could be made fair by the simple inclusion of the right of a respondent judge to a jury trial of unbiased impartial jurors, the same jurors that have for many years decided equally complex issues involving legal and medical malpractice claims.

- PAGE 43 -

Surely due process requires as safe or safer a method of removing elected public officials in the State of Florida than the method provided for the revocation of doctors' licenses in the State of Wisconsin.

In that case a doctor complained that he did not think it was fundamentally fair to have his prosecutors also try him. IN ruling against him the United States Supreme Court stated that the combination of investigative and adjudicative functions **without more** does not constitute a due process violation. Larking at 58.

The Court also stated that, "Of course, we should be alert to the possibilities of bias that may lurk in the way **particular**

procedures actually work **in practice**. Larkin at 51. (Emphasis added.)

Respondent's position is that taken as a whole and as applied to him in particular the scheme authorized by the Florida Constitution and the Florida Code of Judicial Conduct under a realistic appraisal of psychological tendencies and human weaknesses poses too high a risk of actual bias or prejudgment and must be forbidden.

AS TO GROUND TWO

SUBSTANTIVE DUE PROCESS

A law must be definite to be valid. 16 AmJur2d §717, To be constitutional it must set out in terms that the ordinary person exercising ordinary common sense can sufficiently understand and comply with it. Arnett v.

Kennedy, 416 US 134.

The applicable law related to this case is the Florida Code of Judicial Conduct. The Committee on Standards of Conduct Governing Judges is a committee of 10 judges who upon request

provide written opinion on the application of the Florida Code of Judicial Conduct.

The committee is expressly charged with rendering advisory opinions interpreting the application of the Code of Judicial Conduct to specific circumstances confronting or affecting a judge or judicial candidate. Its opinions are advisory to the inquiring party, to the Judicial qualifications Commission and to the judiciary at large. Conduct that is consistent with an advisory opinion issued by the committee may be evidence of good faith on the part of the judge, but the Judicial Qualifications Commission is not bound by the interpretive opinions issued by the committee. Petition of the Committee on Standards of Conduct for Judges, 327 So.2d 5 (Fla. 1976).

However, when Respondent and other judges request opinions from the Committee on Standards of Conduct governing Judges, even these experts cannot agree on what the Florida Code of Judicial Conduct means (Ex 126, 128, 129 and 130).

Furthermore, when United States Supreme Court Justices criticize the bar, it makes the Law Review Journals. When

Respondent does the same thing, it is interpreted by the Commission as a violation of the Code of Judicial Conduct and

becomes a formal charge (Ex 109, charge 1A).

When attorneys in the Federal Courts abandon their clients on appeal, the Federal Rules are changed to make them stop (Ex 122). When Respondent reminds an attorney under the same circumstances of his Oath of Admission, again under a tortured interpretation of the Code it becomes a formal charge (Ex 109, charge 3C).

Then in what appears to be a mares nest of trivial examinations, the Respondent is allegedly subject to the humiliation of a reprimand or impeachment from his elected office for such egregious conduct as requiring probationers to obtain bicycles if they have no transportation or for stating in court that "You cannot separate law from morality".

A provision of law violates the substantive due process rights of the Federal Constitution where its language does not sufficiently define proscribed conduct so that men of common intelligence must guess at its meaning. Keyshan v. Board of Regents, 385 US 589.

Not only must men of common intelligence guess at the meaning of the Florida Code of Judicial Conduct but also the expert judges assigned to the committee charged with interpreting it. Accordingly, the Code is so vague that it denies Respondent his State and Federal right to substantive due process of law.

Having no constitutional authority to enforce, the

Commission is without jurisdiction and the charges should be dismissed.

AS TO GROUND THREE

DUE PROCESS OF LAW - JQC HAS VIOLATED ITS OWN RULES

If the state courts have acted in consonance with the constitutional laws of the state and its own procedure, it is rare that a federal court will interfere on due process grounds. Jordan v. Massachusetts, 225 US 167 (emphasis added). The courts are required to adjudicate rights by due course of law by appropriate procedure duly prescribed. Coral Gables v. Certain Lands, 149 So. 36.

The Respondent incorporates by reference the factual circumstances outlined in Ground One of his Amended Motion to Dismiss.

In summary, the Respondent had 32 days to prepare for 25 additional charges of misconduct involving events some which related back to incidents **four** years in the past. He was also limited to 5.6 minutes per charge to explain 32 separate and complicated charges.

Respondent objected to the above stated facts and circumstances and refused to participate in what was an obviously superficial and unreasonable "opportunity" (Ex 115, P 39, L 10).

The JQC is required by its own rules to afford a respondent judge a **reasonable opportunity** to make a statement before the Commission to explain, refute, or admit the

conduct under investigation (FJQCR 6[b]).

CONCLUSION

GROUND THREE

The JQC failed to provide a reasonable opportunity as required by its own Rules. It thus violated the procedural due

process rights of the Respondent and cannot proceed with formal charges unless and until it complies with its own Rules. Having failed to abide by its own Rules, the JQC denied Respondent his procedural due process rights protected by both the State and Federal Constitution.

AS TO GROUND FOUR

DUE PROCESS OF LAW - BIASED TRIBUNAL

An essential element of due process of law is an opportunity to defend in an orderly proceeding. McDaniel v. EcElvy, 108 So. 820 (Fla. 1926). The tribunal must be a fair and impartial one. Nebraska Press v. Stuart, 427 US 539; Federal Construction Co. Curd, 177 P 469. More specifically, individuals exposed to administrative proceeding of a quasi-judicial nature have a right to be tried by an unbiased and impartial board. Gibson v. Berryhill, 411 US 564.

The Respondent incorporates by reference the facts and argument with respect to Ground One. In summary, the Commission is composed of elected officials and political appointees who represent groups having inherently adverse interest and who are subject to political pressure from the press and the organized bar.

Furthermore, it has demonstrated its bias by its unreasonable and unfair treatment of the Respondent including its denial of a reasonable opportunity to prepare or present his case. The Commission has also demonstrated its bias by refusing to answer reasonable voir dire questions related to possible conflicts. Furthermore, its executive secretary has answered questions for the press and the organized Bar that it would not answer for the Respondent.

Finally, the Commission on at least two occasions met to consider Respondent's case. Present at both hearings were Commissioners Frank and Freeman (Ex 106 P 1 and 115, P 1).

During the May 18 meeting and subsequent to the July 31 meeting the Commissioners discussed in secret and ex parte the Respondent's case (Ex 106, P 18, L 7 and Ex 109, P 1). it is reasonable under the FJQC Rules to believe that prior secret and ex parte discussions were had concerning Respondent's case and involving Commissioners Frank and Freeman.

At the July 31 meeting Commissioner Freeman voluntarily recused himself for prejudice (Ex 115, P 47, L 16). Subsequently Commissioner frank recused himself for prejudice (Ex 117).

CONCLUSION

GROUND FOUR

Where the members of a tribunal trying a judge are composed of members representing groups which the judge is

duty bound to criticize and control and where the judge is charged with inappropriately criticizing members of those groups and where two of those thirteen members on a commission participate in the investigation and discussion of a respondent judge's case including meetings for the purpose of filing a notice of investigation and the filing of formal charges, knowing and admitting that they are prejudiced against the respondent, the respondent is denied an opportunity to be tried by an unbiased and impartial board thus denying his State and Federal due process rights.

AS TO GROUND FIVE

FREEDOM OF SPEECH

The JQC has formally charged the Respondent with two counts of improper public statements made in his capacity as an elected public official.

Charge 1A states that:

> In an article published September 15, 1988, in St. Petersburg Times, several weeks before the election for the State Attorney, you are quoted as saying "I know of attorneys and doctors who have been arrested for DUIs and have had their DUIs reduced to reckless driving, basically because they are doctors and lawyers." According to the report, you refused to discuss specific cases.

Charge 1B states that:

> On or about September 15, 1998 [sic], you made statements, widely reported in the local media, that local attorneys were like little children, acted goofy, made faces at you and that you should put them in jail so they could learn to read law books. You later retracted your statements and issued an apology.

The news reports complained of are attached to

Respondent's Amended Motion to Dismiss as Exhibits 27 and 28.

The speech complained of is the type of speech which is not only required by Canon 1 of the Florida Code of Judicial Conduct but is also closely protected by the First Amendment of the United

States Constitution and Article One, Section Four, of the Florida State Constitution.

It should be specially noted that whereas the Respondent has by other charges been accused of unethical conduct for criticizing named individuals that these charges involved generalized criticism of poor conduct and favoritism in the court system.

The threat of and the actual prosecution of charges of unethical conduct for making these statements has the effect of chilling the free speech of judges with respect to the quality of courts and the lawyers who practice therein.

While the Respondent recognizes that the state has a duty to regulate in some fashion the conduct of the judiciary, the state's efforts must be subjected to an increasingly strict level of scrutiny as they move closer to impairing our first amendment values. Morial v. Judiciary Commission, 565 F.2d 295 (5th Cir. 1977).

Where, as here, a regulation goes so far as to restrict speech because of its content, there is a strong presumption that the regulation is unconstitutional. Accordingly, a court must strictly scrutinize such a regulation, requiring the state to bear the burden of showing that its regulation

is necessary to serve a compelling state interest and that it is narrowly drawn to achieve that end. Widmar v. Vincent, 454 US 263.

In the case of Charles Horn v. The Florida Judicial Qualifications Commission, 110 Fla. Case No TCA 90-40122-WS Aug. 10, 1990, the Court stated that:

> This court has little trouble concluding that states need not treat candidates for judicial office the same as candidates for other elective offices. As the Fifth Circuit has noted, a state may regulate would-be judges differently, if for no other reason, because the judicial office is different in key respects from other offices. Morial, 565 F.2d at 305. For example:
>
> > [T]he contours of the judicial function make inappropriate the same kind of particularized pledges of conduct in office that are the very stuff of campaigns for most non-judicial offices. A candidate for the mayoralty can and often should announce his determination to effect some program, to reach a particular result on some question of city policy, or to advance the interests of a particular group. It is expected that his decisions in office may be predetermined by campaign commitment. Not so the candidate for judicial office. He cannot, consistent with the proper exercise of his judicial powers, bind himself to decide particular cases in order to achieve a given programmatic result.

> Id. Furthermore, in a contest between lawyers for a judicial office the integrity of which is a matter of significant public concern, a state may require candidates to maintain a higher standard of conduct than can be expected of candidates in other types of elective contests. Lawyers and judges are members of a privileged and responsible profession, and their obedience to the profession's ethical percepts may require abstention from what in other circumstances would be constitutionally protected behavior.
>
> - PAGE 52 -
>
> Nevertheless, a person does not surrender his constitutional right to freedom of speech when he becomes a candidate for judicial office. A state cannot require so much. Indeed, when a state decides that its trial judges are to be popularly elected, as Florida has done, it must recognize the candidates' right to make campaign speeches and the concomitant right of the public to be informed about the judicial candidates. As mentioned previously, only when a compelling state interest is implicated can the state burden the candidates' exercise of free speech. Even then, by compelling interest must be served by regulations so narrowly drafted and strictly applied that they do not necessarily infringe upon the candidates' first amendment rights.

Ironically, the compelling state interest, making sure that judicial candidates were not particular about particular cases is totally inappropriate to the speech of the Respondent in this case.

Indeed it appears that the Commission is especially galled that the Respondent will not state the particular examples to support his generalized statements.

On the other hand the compelling interest in protecting the free speech of judges to criticize in general terms of the health of the courts and the bar is the right of the public to know the health of their courts and attorneys from those who are in the best position to know. The free speech interest here also involves the right of the public to know which of its judges to elect and reelect.

Those who agree that our courts and the bar need reform need to hear from their judges who agree.

Requiring those judges to prove their opinions with specific examples not only fails as a compelling state

- PAGE 53 -

interest but is actually destructive to the court system.

* * *

- PAGE 61 -

* * *

AS TO GROUND SEVEN

LACK OF SUBJECT MATTER JURISDICTION

The JQC has formally charged the Respondent with three counts of engaging in ex parte communications.

Charge 6A states that:

> In June of 1991, you engaged in at least one ex parte conversation with an Assistant Public Defendant (sic) regarding State v. Barrett.

Charge 6B states that:

> In Case No. 89-385-SP, after announcing judgment for the Plaintiff in the amount of $463.36 and costs, the defendant and his counsel left the courtroom. In their absence, you advised the plaintiff that she could keep the alleged defective pump for which you had just awarded her the purchase price.

Rule 7(b) of the Florida Judicial Qualifications Commission Rules (FJQCR) provides:

> The Notice shall be issued in the name of the commission and specify in ordinary and concise language charges against the Judge and allege essential facts upon which such charges are based . . . .

Neither the conduct of the Respondent in engaging in an ex parte conversation with a public defender nor in discussing an elderly woman's well pump after her court case was ended, if true, constitutes facts violating any one or all of the Canons of the Code of Judicial Conduct.

First of all, to be ex parte a communication to a party must be taken at the instance of and for the benefit of one party only. Black's Law Dictionary, 4 ed, p 662.

Thus it must necessarily involve a communication concerning a pending case before the judge having authority to grant some relief at issue.

Furthermore, Canon 3 of the Florida Code of Judicial Conduct specifically states that ex parte communications are prohibited only with respect to "pending or impending" proceedings.

Neither charge 6A, 6B, or 6C allege that the Respondent engaged in an ex parte communication involving an issue with respect to pending or impending proceedings over which he had any authority.

CONCLUSION

GROUND SEVEN

With respect to charges 6A, 6B, and 6C, the Florida Judicial Qualifications Commission is without subject matter jurisdiction.

Respectfully submitted,

/s/ Gary G. Graham
HONORABLE GARY G. GRAHAM
County Court Judge
Citrus County, Florida
One Courthouse Sq., Room 215

Inverness, FL 34450-4802
(904) 637-9960

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing has been furnished by United Parcel Service to Clerk of The Supreme Court of Florida, Supreme Court Building, 500 S. Duval St., Tallahassee, FL 32399-1925, and a true copy to Mr. Roy T. Rhodes, Attorney for Florida Judicial Qualifications Commission, Room 102, The Historic Capitol, Tallahassee, FL 32399-6000; and to Mr. Terrance A. Bostic, Special Counsel to the Florida Judicial Qualifications Commission, 220 S. Franklin St., Tampa, FL 33602, this 9th day of November, 1992.

/s/ Joette M. Uzar
JOETTE M. UZAR
Judicial Assistant

DOCUMENT 45

Excerpts from Answer, Counterclaim, and Demand for Jury Trial

BEFORE THE FLORIDA JUDICIAL
QUALIFICATIONS COMMISSION

INQUIRY CONCERNING A JUDGE, NO. 91,415
HONORABLE GARY G. GRAHAM
CITRUS COUNTY COURT JUDGE

SUPREME COURT NO. 80,273

_____/

ANSWER, COUNTERCLAIM, AND DEMAND FOR JURY TRIAL

ANSWER

Respondent Judge, Honorable Gary G. Graham, in answer to the Notice of Formal Charges filed on August 7, 1992, and Amendment to Notice of Formal Charges filed on October 26, 1992, admits, denies, and alleges as follows:

Paragraphs 1, 2, 3, 4, 5, and 6 are denied except that he admits only that part of paragraph 1A which states that he "issued an apology", denying however that this ethical mistake is an example of repeated misconduct, denying that it shows a present unfitness to be a judge, and denying the jurisdiction of the Commission to proceed against him with regard thereto.

FIRST AFFIRMATIVE DEFENSE

The JQC is an unconstitutional institution which violates the procedural due process rights protected by the State and Federal Constitutions and therefore lacks jurisdiction to proceed against the Respondent Judge.

SECOND AFFIRMATIVE DEFENSE

The Florida Code of Judicial Conduct is so vague that a reasonable person would not be put on notice of what conduct

is proscribed. Accordingly, it violates the State and Federal substantive due process rights protected by the State and Federal Constitutions and is unenforceable.

THIRD AFFIRMATIVE DEFENSE

The JQC has violated the State and Federal procedural due process rights of the individual Respondent by failing to provide a hearing as required by Rule 6(b) of the Florida Judicial Qualifications Commission Rules and thereby lacks jurisdiction to hear the issues involved at a final hearing.

FOURTH AFFIRMATIVE DEFENSE

The JQC has violated the State and Federal procedural due process rights of Respondent by being composed of individuals with inherently adverse interest subjecting them to bias and by conducting closed non-adversary ex parte hearings wherein three members who were admittedly biased and prejudiced against the Respondent participated and therefore lacks jurisdiction to proceed against the Respondent Judge.

FIFTH AFFIRMATIVE DEFENSE

As to charge 1, the speech alleged in the Notice of Formal Charges is absolutely protected by the First Amendment of the United States Constitution and Article One, Section Four, of the Florida State Constitution.

SIXTH AFFIRMATIVE DEFENSE

As to all charges occurring before the Respondent Judge's current term of office, the JQC lacks jurisdiction

for the reason that these widely publicized incidents occurred years ago during the Respondent's first term of office. Turner v. Earle, 295 So.2d 609 (Fla. 1974).

SEVENTH AFFIRMATIVE DEFENSE

As to charges 6A, 6B, and 6C, the JQC does not have subject matter jurisdiction over the conduct alleged in the Notice of Formal Charges for the reason that on their face they are not "ex parte" or alternatively are not prohibited ex parte communications.

EIGHTH AFFIRMATIVE DEFENSE

The charge against the Respondent Judge do not logically fall within the category of habitual judicial intemperance or unbecoming judicial conduct as contemplated in Section 17(a)(3), Article V, Florida State Constitution. The conduct did not descend into rancorous personality or verbal impropriety and represents a mare nest of trivial charge designed to vent the spleen of disappointed litigants and special groups with an axe to grind. Accordingly, the JQC is without subject matter jurisdiction.

NINTH AFFIRMATIVE DEFENSE

With respect to all charges occurring during the Respondent Judge's first term of office, the JQC has known the substance of these charges for years and delaying complaining of them until the evidence was old and cold and witnesses disappeared or died. The Respondent Judge is

accordingly unable to defend himself with respect to said charges and the Commission is estopped from proceeding by the theory of estoppel and latches.

TENTH AFFIRMATIVE DEFENSE

The prosecution of the Respondent Judge with regard to the trivial matters contained in the Notice of Formal Charges is an impermissible selective prosecution obtained through political pressure put upon the Commission in the form of exposure to misleading adverse and critical newspaper editorials and threats of legal action against it.

ELEVENTH AFFIRMATIVE DEFENSE

The Notice of Formal Charges fails to allege facts sufficient to establish its jurisdiction over the subject matter or person of the Respondent Judge. Specifically, it fails to allege at the time of the alleged misconduct or at any other time that the Respondent was a duly elected, qualified, and acting County Court Judge in the State of Florida.

WHEREFORE, Respondent prays that the Commission, after a hearing:

1. Declare itself unconstitutional.

2. Declare the Florida Code of Judicial Conduct unconstitutional.

3. Declare the particular proceedings against the Respondent Judge unconstitutional for having failed to

provide a Rule 6(b) hearings.

4. Declare itself biased and prejudiced against the Respondent Judge.

5. Declare the above-stated action to be a violation of the Respondent Judge's right to freedom of speech and protected by both State and Federal Constitutions.

6. Declare those charges occurring during the Respondent Judge's first term of office to be outside the scope of the Commission's jurisdiction.

7. Declare the substance of charges 6A, 6B, and 6C to be outside the scope of the Commission's subject matter jurisdiction for the reason they relate to conduct which is neither prohibited nor ex parte.

8. Declare all charges to be outside the scope of the jurisdiction of the Commission as contemplated in Section 17(a)(3), Article V, Florida State Constitution.

9. Declare the charges occurring during the Respondent Judge's first term of office to be estopped by delay and latches.

10. Declare the prosecution of the Notice of Formal Charges a politically pressured vindictive and impermissible selective prosecution.

11. Declare the charges to be null and void for failure to allege the fundamental facts establishing jurisdiction over the Respondent Judge.

12. Deny any relief whatsoever as the Commission's Notice of Formal Charges is without equity or justice.

13. Accept and recommend to the Florida Supreme Court the Respondent Judge's suggestions for reform of the various problems confronting the Citrus County justice system.

14. Extend an apology to the Respondent Judge for engaging in a regrettable inquiry which ought never have been pursued.

15. Commend the Respondent Judge for his courage and dedication which he has demonstrated in defending the independence and integrity of the judiciary.

16. Provide such other further legal and equitable relief as it deems just and proper.

COUNTERCLAIM

* * *

- PAGE 14 -

* * *

DEMAND FOR JURY TRIAL

In the event that the Commission does not transfer this case to the Circuit Court of Hillsborough County, Florida, the Respondent Judge notes that nothing contained in Article V, Section 12, Florida State Constitution, specifically states that a jury trial is not available upon demand and noting that Article V, Section 12, paragraph (f) is not necessarily inconsistent with a jury trial to determine the facts of the case, does hereby demand a jury trial to

determine the contested issues of fact. This demand is made pursuant to Fla.R.Civ.P. 1.430 and FJQCR 12 and the due process requirements of both the State and Federal Constitutions.

Respectfully submitted,

/s/ Gary G. Graham
HONORABLE GARY G. GRAHAM
County Court Judge
Citrus County, Florida
One Courthouse Sq., Room 215
Inverness, FL 34450-4802
(904) 637-9960

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing Answer, Counterclaim and Demand for Jury Trial has been furnished by hand delivery to Clerk of The Supreme Court of Florida, Supreme Court Building, 500 S. Duval St., Tallahassee, FL 32399-1925, and a true copy of the foregoing has been furnished by United States Mail to Mr. Roy T. Rhodes, Attorney for Florida Judicial Qualifications Commission, Room 102, The Historic Capitol, Tallahassee, FL 32399-6000; and to Mr. Terrance A. Bostic, Special Counsel to the Florida Judicial Qualifications Commission, 220 S. Franklin St., Tampa, FL 33602, this 18th day of December, 1992.

/s/ Joette M. Uzar
JOETTE M. UZAR
Judicial Assistant

DOCUMENT 46

Excerpts from Memorandum of Law in Support of Fourth Amended Motion to Dismiss

BEFORE THE FLORIDA JUDICIAL
QUALIFICATIONS COMMISSION

INQUIRY CONCERNING A JUDGE, NO. 91,415

SUPREME COURT NO. 80,273

HONORABLE GARY G. GRAHAM

CITRUS COUNTY COURT JUDGE

_____/

MEMORANDUM OF LAW IN SUPPORT OF THE FOURTH AMENDED MOTION TO DISMISS

* * *

NOTE: Pages 2-48 are deleted here because they are substantial identical to the Third Memorandum of Law in Support of Second Amended Motion to Dismiss found at (A 995) of the Appendix.

* * *

* * *

AS TO GROUND SIX

Intentionally Denying the Respondent

An Opportunity to Preserve a Factual or Legal Record on Appeal

The Respondent researched the constitutional issues regarding the due process objection to one body acting as investigator, prosecutor, judge and jury. He also researched the law related to unconstitutional vagueness and selective prosecution. Based on the case law including the United State Supreme Court decision in Withrow v. Larkin he set about establishing the basis for a federal constitutional challenge of the Florida Judicial Qualifications Commission and the Florida Code of Judicial Conduct.

The Florida Judicial Qualifications Commission threatened by academic and legal challenge abused the authority of its office by preventing the Respondent from engaging in meaningful discovery or proof of facts necessary to support those

challenges.

It did so by quashing depositions and trial subpoenas, refusing to compel answers at depositions refusing to allow the Respondent to proffer objections, testimony or legal argument, excluding the Respondent's witnesses and tangible evidence from trial and ultimately ruling that he could not make or attempt to prove constitutionally based affirmative defenses.

When these matters were brought to the attention of the Florida supreme Court it refused to grant the Respondent any relief.

CONCLUSION

GROUND SIX

The Commission and the Florida Supreme Court by its adverse legal, evidentiary and procedural rulings have denied Respondent his right to make or preserve a factual basis and record on appeal to support his constitutional challenges and thus have denied him his right to due process of law as protected by both the State and Federal Constitutions.

AS TO GROUND SEVEN

Constitutional Challenges Set Forth in

Respondent's Federal Lawsuit

The Respondent incorporates by reference all arguments contained in his various pleadings on file as part of his first

Amended Complaint for injunction and Declaration Relief filed in the United States District Court, Middle District of Florida, Case Number 93-137-CIV-T-17B attached hereto as Exhibit 173.

CONCLUSION

GROUND SEVEN

The charges against Respondent should be dismissed for the reasons stated in his Federal lawsuit Case number 93-137-CIV-T-17B.

Respectfully submitted,

HONORABLE GARY G. GRAHAM
County Court Judge
Citrus County, Florida
One Courthouse Sq., Room 215
Inverness, FL 34450-4802
(904) 637-9960

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing has been furnished by hand delivery to Clerk of The Supreme Court of Florida, Supreme Court Building, 500 S. Duval St., Tallahassee, FL 32399-1925, and a true copy mailed to Mr. Terrance A. Bostic, Special Counsel to the Florida Judicial Qualifications Commission, 220 S. Franklin St., Tampa, FL 33602, this 18th day of December, 1992.

DOCUMENT 47

Excerpts
from
Petitioner's Show Cause Response
Pages 189 - 193

Note: This excerpt includes a transcription of proceedings where defendant Douglas was originally instructed not to contact his children as a condition of his second period of probation.

It also contains the State's response to defendant's motion to Stay Pending Appeal filed with the Appellate Court.

This document is reprinted verbatim. However, incorrectly placed margins in the original document have been reformatted for easier reading.

* * *

CHARGE 2 P

The Commission charges:

P: In State v. Douglas, Case NO. 90-8778-MM, as part of your sentence, you entered an order prohibiting Douglas from having any contact with his children.

The Commission found that:

> The Commission finds that Respondent was the presiding judge in State v. Douglas, in which the defendant was charged with misdemeanor battery on his estranged spouse. As a special condition of probation, Respondent prohibited the defendant from having any contact with his children. Under the circumstances of this case, Respondent's order did not have any relationship to the crime for which the defendant was convicted, related to conduct which itself was not criminal and was not reasonably related to future criminality; he exceeded and abused the power of his office and imposed an improper sentence.
>
> The clear and convincing evidence supporting this finding includes the official court file (Commission Exhibit 12).

That's it. The clear and convincing evidence is in the Court file, (Commission Exhibit 12) in evidence. Let's look at it.

The defendant was ordered to have no contact with the children as to count two of the information filed in Case No.: 90-8778-MM.

Count two informed that:

- PAGE 190 -

COUNT TWO

> and the Assistant State Attorney upon his oath aforesaid, further information makes that JAMES EDWARD DOUGLAS, aka, BUDDY DOUGLAS in the County of Citrus, and the State of Florida, on the 28th day of September, 1990, in the County and State aforesaid did unlawfully and willfully enter or remain in a structure or conveyance, to wit: DWELLING, the property of OWNER JOHN BRESNAHAN IN CARE AND CONTROL OF DEENA BRESNAHAN DOUGLAS, located at or near 5701 S. PINETREE POINT, LECANTO, FLORIDA, without being authorized, licensed or invited to do so by the owner, lessee or their agent, and at the time of the entering or remaining the said property was occupied by DEENA BRESNAHAN DOUGLAS, GLENN SIVIA, JENNIFER DOUGLAS AND JULIE DOUGLAS, a human being, in violation of Florida Statutes 810.08(1) and 810.08(2)(b);

Jennifer and Julie Douglas were the victims of the crime of trespass to an occupied structure. Jennifer and Julie Douglas are Mr. Douglas' children.

There is substantial case law holding that a judge may impose as a condition of probation that a defendant not have contact with his victims.

The Respondent, however, did not immediately impose this condition of probation. This condition was imposed only after conflicts surrounding the defendant's visitation caused him to violate his original probation.

The transcript of the probation violation sets forth the Court's reasoning:

> MR. DOUGLAS: Yes sir.
>
> COURT: I'll accept your plea. On your two new periods of probation. You have to finish Domestic Violence; you have to spend the five weekends in County Jail. I hope that's to get your attention that I'm serious about this probation. And you're not to have any contact with Deana Douglas or her family. Do you understand that? You're not
>
> - PAGE 191 -
>
> to call them on the telephone; you're not to be where they live or where they work; you're not to write them a letter.
>
> MS. WILEY: Your Honor, what about his children?
>
> COURT: I'm considering telling him he's not to have any contact with them because you've got to understand this is in the context of a

criminal case. He has threatened this woman; he battered her; he trespassed to her home, and he committed a criminal mischief. Then he was placed on probation and during that period of probation he has called her up and had contact with her in violation of the court's order, refused treatment for Domestic Violence, and threatened her life. And the excuse for all this was his children, and I think it's a reasonable and necessary part of the new period of probation to remove that element from the entire situation because otherwise I think he's going to be calling her again, threatening her again, back in this court, and back in jail.

MS. WILEY: But two and a half years of no contact with his children, Your Honor?

COURT: Sir, I'm going to order completely no contact with the in-laws or her children for the first year of probation.

MR. DOUGLAS: Sir, I didn't do nothing wrong. You're doing just what these people want you to do.

COURT: Sir. What I wanted you to do was go out and receive health counseling at Marion Mental Health for Domestic Violence. For two months, you ignored that.

MR. DOUGLAS: No, sir. I did it.

COURT: I asked you --

MR. DOUGLAS: You asked me for proof. I didn't have no proof. I told my lawyer -- I dais she can call 'em but --

COURT: I asked you not to call this lady. I asked you not to call her parents. You did it.

- PAGE 192 -

MR. DOUGLAS: You told me also to pick up my kids and daycare, and they wouldn't let me.

COURT: Well, you should have handled that through your attorney.

MR. DOUGLAS: I tried to. At that point I got the letter.

COURT: Well, I'm not going to put you back in the same situation you have already failed at and also tried to commit suicide in. So, you know, I'm not going to go back to the same situation that's been a total failure and resulted in not only your violation of probation but in that man's new charges on criminal offenses. I'm not going to go back to the same situation. That has been a total failure. the only thing I can think of to keep you out of trouble is just to say "Stay away from everybody."

When the Defendant appealed this ruling, the State of Florida fully supported both the wisdom and legality of the sentence, and filed the following response to the Defendant's request for a stay pending appeal:

The State of Florida, by and through the undersigned Assistant State Attorney, respectfully moves the Appellate Court to deny the defendant's request for a Stay Pending Appeal and as grounds states:

1. On December 3, 1990, Defendant entered a plea of nolo contendere to the substantive charges Battery, Trespass to an Occupied Dwelling and Criminal Mischief.

2. The Defendant was sentenced to 12 months probation on Count I-Battery, 6 months probation on Count II Trespass to Occupied Structure consecutive to Count I, 6 months probation on Count III- Criminal Mischief, consecutive to Count II. One of the conditions of probation, was that the defendant have no contact with his ex-wife, Deanna Douglas, or her family and that he must pick the children up at daycare.

3. An Affidavit for Violation of Probation was filed January 18, 1991. One of the basis for the violation was that the Defendant harassed his ex-wife, Deanna Douglas and her family with phone calls and at the day care center.

4. On March 18, 1991 a hearing was held on the Defendant's Violation of Probation. The Defendant was found guilty of the violation and further that the defendant had harassed his ex-wife and family, had not obtained a mental health evaluation or counseling and had threatened violence. The Court revoked the probation and ordered the defendant have no contact with Deanna Douglas or her family or his children.

5. The Defendant demonstrated both in the original charges and in the conduct which predicated the violation of probation a tendency to demonstrate violence toward his ex-wife and her family over the children.

6. The Trial Court may in its discretion impose those conditions of probation it feels are necessary to protect the victims of the offenses. The children were named victims in Count II Trespass to Occupied Dwelling.

7. The Trial Court imposed upon the Defendant the condition that he no longer have any contact with his children only after he violated his probation by demonstrating his continuing harassment and threats toward his ex-wife and her family.

WHEREFORE the State of Florida/Appellee respectfully requests that this court deny the Defendant/Appellant's Motion for Stay Pending Appeal.

_____

Lisa M. Porter

Thus, the State of Florida, is on record as having been in full legal agreement with the order. The status of the children as victims and the extent of violence related to the continuing relationship with the father is set forth in the Grandmother's chilling testimony at the hearings:

DIRECT EXAMINATION BY JUDGE GRAHAM

Q Ms. Bresnahan, how long have you lived in Citrus County?

- PAGE 194 -

A Almost 15 years.

Q Do you know an individual by the name of James Edward Douglas?

A Yes, I do.

Q And how are you related to him, or how do you know him?

A He is my ex-son-in-law.

Q In other words, he was married to your daughter at one time?

A Yes he was.

Q Do you have grandchildren?

A Yes, I do.

Q And is Mr. Douglas the father of your grandchildren?

A Yes, he is.

Q Were you familiar with all the charges related to the criminal prosecution of Mr. Douglas, including trespass to an occupied structure, back in 1990?

A Yes, I do.

Q Are you familiar with the sentence of that court where, as victims of the crime of trespass to an occupied structure, I would not allow him to have any contact with his children?

A Yes, I do.

Q Do you believe that that was appropriate under all the facts and circumstances known to you?

A Absolutely, Absolutely.

Q Would you share with the Commission the facts and circumstances know to you at the time?

A My son-in-law---

MR. BOSTIC: Wait. Excuse me. I'm going to object to a hearsay witness coming into the courtroom, who is obviously related to one of the parties in the Douglas proceeding, going on about the marital problems between Mr. and Ms. Douglas. The court file is in evidence. It's on Judge Graham's - it's on the podium. It's approximately an

inch thick, and I think the Commission can determine whatever it's going to determine from the court file.

THE CHAIRMAN: Well I certainly will not allow hearsay. If the witness is going to testify to her personal observations as to any alleged misconduct of Mr. Douglas with his children, and the judge was made privy to that, I think that's an issue that the Commission should consider. So you may answer, but be mindful, Judge, we don't want to hear hearsay.

BY JUDGE GRAHAM:

Q Ms. Bresnahan, to the best of your ability, avoiding anything that was told to you, how did Mr. Douglas treat your grandchildren? Share that with the Commission.

A The Children were put through severe emotional stress. My granddaughter constantly was sick to her stomach, severe headaches, every time she had to visit her father. She was exposed to violence against her mother. When he had them at his apartment, he would call the mother and cuss her out, call her every

name in the book, The children have heard him threaten to kill --

MR. BOSTIC: Objection. That's hearsay.

THE WITNESS: No, sir. It is not hearsay.

THE CHAIRMAN: Madame Witness, please --

THE WITNESS: He has --

THE CHAIRMAN: Madame Witness, would you just hold on for one second?

THE WITNESS: Excuse me.

THE CHAIRMAN: When they make objections, the Chair has to rule on them.

THE WITNESS: I'm sorry.

THE CHAIRMAN: I understand how you feel about it, but just hold on for one second.

- PAGE 196 -

The objection as to the hearsay basis is correct. I am only going to allow her to testify to her personal observations, not what was told to her by anyone.

BY JUDGE GRAHAM:

Q Okay. Now, you were trying to talk about when he had threatened to kill them?

A He--the children--

JUDGE GRAHAM: I'm going to lay the predicate.

MR. BOSTIC: Objection. Those words never came out of that witness' mouth.

THE CHAIRMAN: Right. Judge, you are leading. I think the proper thing is to first establish a predicate. Did she observe him say or do anything?

BY JUDGE GRAHAM:

Q Did you observe him say or -- threaten to kill you daughter?

A Yes –

Q Share that with the Commission

A --on many occasions.

Q And tell them what he would do.

A He would call the office where my daughter worked with me. I would listen to the telephone conversations, as did the Sheriff's Department, and -- where he would threaten to kill her in many different ways. Her, my husband, and myself.

Q Would he describe how he was going to doit? [sic]

A Yes, he would. In great detail.

Q Share that with the Commission.

A He even -- well, it would be hearsay.

THE CHAIRMAN: Well, thank you for making –

Q Well, the times that you would listen.

A He told my daughter that he would cut my daughter from her privates to her throat.

- PAGE 197 -

Q Did he use the word "privates"?

A No, he did not.

Q What word did he use?

THE CHAIRMAN: Well, I – that's not necessary. The Commission can understand what she's saying.

JUDGE GRAHAM: No. This shows what kind of fellow Douglas is.

THE CHAIRMAN: Well, I am not going to allow that --

JUDGE GRAHAM: He's not a fellow that says "privates."

THE CHAIRMAN: Well, I am not going to allow that in the courtroom. This Commission understands what he was saying. Please continue with your questioning.

JUDGE GRAHAM: May I make a note for the proffer?

THE CHAIRMAN: You can proffer that at a later time.

A He said he would cut her from her privates to her throat and that he would then call her father over and take care of him and then he would come after me. And this was done on many occasions. Another time he called and said he was going to set her privates on fire.

The children have heard him say these things. The children have seen him attack their mother. The children have been sick every time they have to go visit him to the fact where i have taken the children to doctors for shots for headaches and stomachaches.

Q Have your children -- your grandchildren -0- had to undergo psychological counseling for their trauma?

A They have been in counseling for over a year and a half.

Q And are they still in counseling?

A Yes, they are.

Q Do you think I did right by the children and the defendant to separate them?

A That's the only time they weren't sick., Judge, is when they didn't have to go.

- PAGE 198 -

JUDGE GRAHAM: No further questions.

MR. BOSTIC: No questions.

THE CHAIRMAN: Commissioner members, any questions? Judge Baskin?

COMMISSIONER BASKIN: How old were these children?

THE WITNESS: At the time it first started, four and six.

THE CHAIRMAN: Judge Burnstein?

COMMISSIONER BURNSTEIN: In the civil action where your daughter and her husband were divorced, was there a restriction with regard to visitation or -- how was that?

THE WITNESS: No, there wasn't. My daughter wanted her husband to have a good relationship with the children. She didn't know that he would do the things he did. She had a good relationship with her father, and she wanted her children to have the same. She did not want to deprive them of their father.

THE CHAIRMAN: Any other questions of the Commission? Judge Gillman?

COMMISSIONER GILLMAN: What structure was he charged with trespassing?

THE WITNESS: He broke into my home. My husband and I went on vacation. We were scared for our daughter, because he had gone to her house and tore down her carport and her mailbox with his truck and -- you know, the threats. So we asked her to stay at our house while we went on vacation.

And he had gone to pick up the children at day care. From there, he should have gone to his residence. He didn't. He came to my house, put the children over a locked gate, and had the children at the door. He banged on the door, woke her up. She came to the door, saw the children. She opened the door, because she saw the kids, and he grabbed her and slammed her against the wall, and the children are standing there watching this. One of the children ran and hid under the table by the pool.

THE CHAIRMAN: Were you in court when Judge Graham restricted the visitations of the father towards the children?

THE WITNESS: Yes, I was, because -- we were there on a violation of probation where he had threatened -- called up and threatened to kill me again.

THE CHAIRMAN: So that all was being handled at one time?

THE WITNESS: Yes, sir.

THE CHAIRMAN: And so the judge not only heard the trespass but the alleged violation of probation?

THE WITNESS: I believe so.

THE CHAIRMAN: And you brought out the facts that you've just related to the Commission?

THE WITNESS: Yes.

This is incredible. A decent judge bending over backward to keep a fellow out of jail and on probation, trying to keep him from committing suicide and killing his ex-wife and children, and the JQC wants him removed from office because a circuit level appellate court intellectually disagrees with both the judge and the State of Florida concerning the ability of the Court to deny contact to the victims of count two, trespass to an occupied building.

Frankenstein strikes again!

The Commission has failed to prove by clear and convincing evidence that the Respondent's conduct was anything other than an honest error of law. It's findings and recommendation should be rejected.

DOCUMENT 48

Transcript of *State v. Douglas*

Entered into evidence as Exhibit 119

Subject of Charge 2P (A 691) for which Petitioner was in part removed from office. (A 40)

Deleted from the beginning of the transcript is the portion dealing only with the defendant's qualification for the appointment of a public defender.

IN THE COUNTY COURT OF THE FIFTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA, IN AND FOR CITRUS COUNTY

STATE OF FLORIDA,

Plaintiff,

vs.

Case No.: 90-8778-MM-01, 90-8778-MM-02, 90-8778-MM-03

JAMES EDWARD DOUGLAS,

Defendant.

PROCEEDINGS: Motion Hearing

BEFORE: Honorable Gary Graham
County Court Judge

DATE: April 17, 1991

PLACE: Old Citrus County Courthouse
Inverness, Florida 32650

REPORTED BY: Robin C. Royal
Deputy Official Court Reporter
Notary Public

APPEARANCES: Lisa M. Porter, Esquire
Assistant State Attorney
Appearing on behalf of:
the State of Florida

Peggy J. Wiley, Esquire
Assistant Public Defender
Appearing on behalf of:
the Defendant

LOIS C. DAVIS & ASSOCIATES
OFFICIAL COURT REPORTERS - FIFTH JUDICIAL CIRCUIT
CITRUS COUNTY COURTHOUSE
INVERNESS, FLORIDA 32650

GARY G. GRAHAM NO. 91-415

EXHIBIT 119 EVIDENCE

- PAGE 2 -

THE CLERK: State versus James Edward Douglas.

* * *

- PAGE 8 -

* * *

THEREUPON,

JAMES EDWARD DOUGLAS,

the Defendant herein, first being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. WILEY:

Q Please state your name for the record.

A James Edward Douglas, Jr..

Q Mr. Douglas, were you divorced from Deena Douglas on November 19, 1990?

A Yes, ma'am.

Q And in your divorce settlement, were you awarded visitation rights with your children?

A Yes, ma'am.

MS. WILEY: Your Honor, at this time, I would like to introduce in evidence a certified copy of the Final Judgement of Dissolution of Marriage.

MS. PORTER: Your Honor, may I see it?

MS. WILEY: (Complying.)

BY MS. WILEY:

Q Mr. Douglas, have you been able to visit your children as provided in the divorce decree?

A No, sir, ma'am.

Q You were put on probation on December 3rd, 1990, is that correct?

A Yes, ma'am.

Q And you were ordered to have no contact with your wife -- ex-wife and her parents?

A Yes, ma'am.

Q That was approximately two weeks after your divorce was final?

A Yes, ma'am.

Q Did the Court instruct you, at the time you were put on probation, what you were to do about visiting you children?

A Yes, ma'am.

- PAGE 10 -

Q And what did the Court instruct you?

A Judge told me that I could pick them up at day care during my weekends that I get them.

And they were taken out of the day care.

Q When were they taken out of day care? Do you know?

A Not the exact date, no, ma'am.

Q Would it be correct to say, in the early part of December, sometime after you were put on probation?

Late part of November.

Q In the late part of November? Subsequent of finding that they were taken out of day care, did you contact your divorce attorney, Mr. Vaughn, and ask him what to do?

A Yes, ma'am.

Q Did you receive instructions from Attorney Vaughn?

A Yes, ma'am. He told me I could contact them after he contacted their lawyer. And said, I wasn't be (sic.) under violation of probation if I contacted them about the kids.

Q And Mr. Vaughn is your private attorney?

A Yes, ma'am.

Q Did you at anytime come back to the Court and ask Judge Graham?

A No, ma'am.

Q Did your attorney suggest that?

A No, ma'am. But, I asked if I could come back and

talk to Judge Graham.

Q Who did you ask?

A My probation officer.

Q What were you told?

A I just can't walk in there and talk to him.

Q You did not ask for a hearing to come back and talk to the Judge?

A No, ma'am.

Q At the probation hearing, it was brought out that the wife -- the your ex-wife, Deena had moved to California with the children. Do you know when they moved?

A Not the exact date, no, ma'am.

Q Can you give us an approximate --

A Right at Christmas.

Q Do you know if it was before you had the altercation with Mr. Bresnahan at the Salvation Army office on January 9, 1991?

A It was before then. Yes, ma'am.

Q Were you told that they were going to leave the state of Florida?

A No, ma'am.

Q The alteration with Mr. Bresnahan at the Salvation Army resulted in battery charges being filed by Mr. Bresnahan. Do you know the status of those charges?

A Yes, ma'am. They were dropped.

Q Who told you that?

A The District Attorney?

Q The State Attorney?

A The State Attorney.

Q The Violation of Probation Affidavit was dated January 18, 1991. Have you seen your children since you were divorced?

A I had them once or twice on weekends.

Q Have you seen your children since you were put on probation, December the 3rd?

A Yes, ma'am.

Q Have you seen them since Christmas?

A No, ma'am. I was due for Christmas. They -- I hadn't seen them. I sent their Christmas gifts out to California about a month after Christmas.

Q Did you receive any acknowledgement from Deena that she received the gifts?

A No, ma'am.

Q Deena Douglas was not present for the Violation of Probation Hearing on March 18, 1991. But, she is present today. Do you know if the children have also returned to the State?

A I couldn't tell you, ma'am.

Q You have not seen them?

A -- I don't know.

- PAGE 13 -

Q Were you ever charged with neglect or abuse, or anything concerning your children?

A I never been charged with anything, ma'am.

Q Connected with your children?

A Connected with anything, but --

Q Other than these charges you have now on this probation?

A Yes, ma'am.

Q How would you described your relationship with your children?

A Good. Bring the kids with me every weekend with me. Got a car seat in my truck. Put new seat belts in there that will hold three. And they go all over the place with me.

Q When is the last time you talked with your children on the telephone?

A It's been a good month ago.

Q Would that have been when your wife called you or when you called her?

A She told me that I could call the kids out there after I get their phone number from Cliff Travis or her attorney.

Q Her attorney gave you her phone number and said it was okay to call the children in California?

A Yes, ma'am.

- PAGE 14 -

MS. WILEY: No further questions at this time, your Honor.

THE COURT: Ms. Porter?

MS. PORTER: I don't have anything of this witness.

MS. WILEY: You can step down.

THE COURT: You can step down. Mr. Douglas, I have a question.

RE-EXAMINATION

BY THE COURT:

Q Who is Deena Bresnahan Douglas? Is that your ex-wife?

A Deena Douglas, yes, ma'am. Yes, sir.

Q Who is Glenn Sivia?

A Her boyfriend.

Q Who is Jennifer?

A My daughter.

Q Who is Julie?

A My daughter.

Q Are these the two daughter you're talking about?

A Yes, sir.

THE COURT: Thank you. You may step down.

MS. WILEY: I have no further witnesses to call. Does the State wish to call any?

MS. PORTER: You Honor, Mr. Douglas' ex-wife says she wishes to make a statement. I am at somewhat of a

disadvantage, not having handled this case during the first go-around.

THE COURT: Ms. Douglas, step forward.

THEREUPON,

DEENA DOUGLAS,

the witness herein, first being duly sworn, and testified as follows:

THE COURT: Okay.

MS. DOUGLAS: Okay. From what I understand, this is to set aside the whole order so he can reserve visitation until he took it to a higher Court. Am I correct?

THE COURT: With the children -- With the victim of the crime in Count II.

MS. PORTER: I have Count II as trespass, you Honor.

THE COURT: That's right. Trespass of an Occupied Structure.

MS. PORTER: Of an occupied structure.

THE COURT: With them named as --

MS. PORTER: Okay.

THE COURT: As victims in that trespass.

MS. DOUGLAS: Okay. What happened --

THE COURT: Something, I think, which has been overlooked by the Defendant.

MS. DOUGLAS: I don't know if the Court knows this; that night he had picked them up from day care. My parents gate was locked. They were on vacation. I was there for that reason, to be safe. Okay.?

THE COURT: In their house?

MS. DOUGLAS: Yes, sir. Yes, my boyfriend was there. He returned with my children that night; which I was not to have them back until Sunday. He put them over the locked gate, knocked on the back door. I opened the door to let the children in. That's when he broke through. When he grabbed me, my oldest daughter ran. My youngest watched.

It took me two months to get my daughter to stop grabbing me the way he did. And I can't have it no more. My daughter, when I came back to Florida, didn't want to stay in the home because of him.

She has been through counseling and I just --

THE COURT: He committed the trespass and battery in front of these two children?

MS. DOUGLAS: Yes, sir. I told him, because my daughter has been through counseling at school, and I said, you know, you have got to stop for them. I says --

THE COURT: This was right after a visitation, right? He was returning the children from visitation?

MS. DOUGLAS: He was not suppose to be returning them. He came to look for trouble.

THE COURT: But, he did return them from visitation?

MS. DOUGLAS: Yes, sir.

THE COURT: Okay.

MS. DOUGLAS: And I just -- My daughter has nightmares, you know. And he has told me he would use them to hurt me. And I just can't see -- Fine, if he wants to take it higher; but, don't put the kids through this emotional -- My kids are where they can't see him. My oldest daughter is relieved.

THE COURT: Any questions?

MS. WILEY: Not of this witness, your Honor.

THE COURT: Thank you, ma'am. You can step down. Any other witnesses, Ms. Porter?

MS. PORTER: no, your Honor.

THE COURT: Any argument?

MS. WILEY: Yes, your Honor. Your Honor has pointed out that Count II is a trespass. It's a property crime.

THE COURT: Well, may I interrupt just a moment?

MS. WILEY: Yes, your Honor.

THE COURT: It's not just a property crime, because it's a Trespass of an Occupied Structure. It is not a

victimless crime. In fact, it has enhanced penalties because it does have live people there, victims.

You may continue.

MS. WILEY: Thank you. The Defendant admitted that he violated no contact with the ex-wife and the in-laws, to make arrangements for visitation, as advised by his divorce attorney, who also represented him in the criminal case. It was not a wilful violation.

The ex-wife and her parents are using the criminal court to accomplish what the divorce court would not give them; that is, to keep the Defendant from seeing his children.

The defense would submit that it's up to HRS and the Circuit Court to deal with the visitation problem, if he is to have no contact with the ex-wife and the parents.

But, by depriving him of contact with his children you are invading the children's Constitutional right to visit with their parent

and his right to visit with his children. It should be resolved in Circuit Court.

Defendants who have even abused, physically abused their children, are allowed supervised visitation. And I submit that this Court should allow Circuit Court to resolve the visitation problem.

THE COURT: Ms. Porter, how do you respond?

MS. PORTER: My I ask the Court a question regarding the violation of probation?

THE COURT: Yes.

MS. PORTER: Which I was not privy to. Did he violate his probation by having unauthorized visitation with his children?

THE COURT: He violated his probation for having harassed Deena Douglas and her family with phone calls from the day care center, after being instructed not to have any contact with Deena Douglas or her family.

MS. PORTER: At the day care center?

THE COURT: At the day care center where he was picking up the --

MS. PORTER: -- the children?

THE COURT: It was -- It involved all around these children.

MS. PORTER: Right. Your Honor, my argument, simply, would be; it appears as thought he Defendant in this case is utilizing these children, as his ex-wife said, in a manner in which to get some type of revenge or get even with the wife.

And the incident that occasioned his arrest in this case involved his children. His, then wife at the tim. Then, he violated his probation by doing the same sort of thing. Harassment, calling the day care center,

harassing the children, tormenting the children, trying to torment the wife by doing that to the children.

While it is true that the Circuit Court may have resolved the custody rights in the settlement decree in the Final Dissolution of Marriage, this is a criminal court, which is totally different and apart than what the Circuit Court has ruled regarding the settlement of the property and the custody and visitation of the children.

It's the criminal court's duty to protect the victims of crimes, to order restitution to make retribution when the defendant has caused any damages, as he did in this case.

And in particular instance, he battered his wife, he trespassed into a dwelling, in which his children were present. And battered the mother in front of the children.

And while the Circuit Court may not have been considering this particular act in the Dissolution of Marriage, it certainly is incumbent upon this Court to consider the safety, the welfare and well-being of the victims of this particular crime for which this defendant is on probation right now, after violating it before, he is still on probation.

And certainly, for the duration of his probation,

this Court has control to impose whatever conditions it feels is necessary to rehabilitate the probationer and to also protect the victims in this particular case.

And probation is a privilege. It's not a right. And if Mr. Douglas wants to forfeit the privilege of being on probation, he certainly can serve a term of incarceration in leu (sic.) of being on probation. But, to be on probation is a privilege and what goes along with it are certain conditions.

And if he cannot live up to those conditions, or fulfill those conditions, one of which includes the protection of his children, then perhaps he shouldn't be on probation. He should just simply serve the incarcerative portion of his sentence. And basically, that would be my argument, your Honor.

THE COURT: Mr. Douglas, I am going to deny your motion. I want to say a few words to the Appellate Court so they understand what I am doing.

In this case you make a motion for a stay pending appeal. I am intimately aware of this case. I have been struggling with it for a long time. I have seen the parties involved, and I have heard their testimony in Court. I have heard Mr. Douglas' testimony in Court. I have had a very good opportunity to know the kind of individual Mr. Douglas is.

I hope that the Appellate Court will read closely the letters marked as Plaintiff's Exhibit 1, Evidence 1, which was previously heard. I hope that it will consider these letters by the wife and the wife's parents.

In which case, wherein, the defendant has threatened to kill his wife. He has threatened to kill his wife's in-laws. He has called his wife a F- blanking slut in front of the children. He has armed himself. He has had dangerous weapons and has been armed with them. I have had to remove those from him.

This individual, I am convinced, this individual is a dangerous individual. I want the Appellate Court to understand that.

THE DEFENDANT: Sir --

THE COURT: I have been a, not only a County Court Judge for four years, but also a Circuit Court Judge for juvenile matters for three years. This is a case ripe for somebody getting hurt very badly.

And I gave Mr. Douglas a break when this first happened. I put him on probation. I tried to prevent any future violence by asking him to attend a domestic violence program and stay away from his ex-wife and her parents. And I did allow him visitation on his first probation.

However, it was again, this contact or visitation resulted in a direct violation of his probation; in that he started harassing and having contact with the family.

And I am convinced that, unless I keep him away from the children and family, until he has completed this domestic violence program, and had a period of time to calm down over all this, that somebody is going to get hurt.

And I am convinced that he will not be able to complete his probation if he continues to be in this position of contact with the parents and the children. He just -- At this point, he is not capable of handling that in a mature and safe manner.

I will point to the Appellate Court that these children are more than just standing by through all this. They are victims in the Trespass to an Occupied Structure.

THE DEFENDANT: Do I pay child support, then?

THE COURT: Surely, surely the Courts have a duty to protect victims against future violence. So, I hope they will read this whole file.

If they disagree with me, that's fine. I understand that. There is intellectual disagreements between Courts at times. But, I hope

that they will be very careful and very cautious, because I believe that,

if they stay, if a stay is granted pending appeal or if this Court Order is reversed on the visitation matter, I firmly believe someone is going to get hurt very badly. Next case.

(Thereupon, the proceedings were concluded.)

DOCUMENT 49

Transcript of the Testimony of Kim Amann

Note: This is the transcript of the testimony upon which the JQC solely rested its conviction of Petitioner on Charge 2K (A 38) and for which Petitioner was, in part, removed from office.

This document is Officer Amann's recollection of the March 15, 1992 court proceeding in question.

The actual transcription of those court proceedings which were made a part of the record at page 179 of Petitioner's Show Cause Response follows as Document 50.

* * *

EXAMINATION

BY MR. BOSTIC:

Q Would you please state your full name and spell your last name for the court reporter.

A Kim Amann, A-m-a-n-n.

THE CHAIRMAN: Excuse me, Mr. Bostic. Yes, Judge?

JUDGE GRAHAM: Could he recite the charge number and letter for me that we're discussing here?

THE CHAIRMAN: Could you do that, Mr. Bostic, please?

MR. BOSTIC: 2-K, I believe.

THE CHAIRMAN: Page 7?

MR. BOSTIC: Yes. 2-K.

BY MR. BOSTIC:

Q Did I ask you your business address? I'm sorry.

A 1295 South Lecanto Highway, Lecanto, Florida.

Q And what is the nature of your employment?

A I'm a sergeant-supervisor in the corrections division.

Q With the Citrus County Sheriff's Office?

A With the Citrus County Sheriff's Department.

Q And how long have you been with the Citrus County Sheriff's Office?

A Five years.

Q And what are your primary duties and responsibilities?

A To run and oversee the squad, and care and custody of the inmate population.

Q Now, when you say to "oversee the squad," what do you mean by "the squad"?

A Make sure that my officers perform the duties that they're assigned.

Q And how many officers serve under you?

A I have three under me at present.

Q And generally, what are their duties?

A Running master control, intake of inmates, printing.

Q I would like to direct your attention to March 15th, 1992, and ask you if you were employed by the Citrus County Sheriff's Office at that time.

A Yes, sir.

Q And what was --

- PAGE 1004 -

MR. BOSTIC: Just one second, Your Honor -- Mr. Chairman. I have --

Q Were you employed with the Citrus County Sheriff's Office on March 15th of '92?

A Yes, sir.

Q Where was the jail at that time?

A It was here right next to operations in town.

JUDGE GRAHAM: Excuse me. May I interrupt for just a moment? What was that date?

MR. BOSTIC: March 15th of 1992.

Q Did there come a time where you were requested on that date to go to Judge Graham's chambers --

A Yes, sir.

Q -- I'm sorry, Judge Graham's court?

A Yes, sir.

Q And how did you receive that message?

A Originally Officer Briggs was at first appearance and called over for a supervisor. At that time my corporal responded.

And my corporal arrived there, and Officer Briggs called back and said he did not want a corporal there but he wanted me there.

- PAGE 1005 -

Q Did -- were you told why he wanted you there?

A No, sir.

Q And what did you do upon learning this?

A I immediately headed for the courtroom.

Q And did you go to the courtroom?

A Yes, sir, I did.

Q Upon arriving in the courtroom, what, if anything, did Judge Graham say to you?

A When I arrived at the courtroom, I stood in front of his bench. He asked me if I was the supervisor on duty.

I said, "Yes, sir, I am."

He asked me to state my name, which I did for him. He then told me to take a look around the courtroom and tell him what I saw.

Q And what did you see?

A I did a complete about-face around the courtroom, and I told him I saw three inmates in the jury box and Officer Briggs standing by the judge's bench.

Q And what happened after you made this observation?

JUDGE GRAHAM: Excuse me. I believe the witness is looking at something.

- PAGE 1006 -

THE WITNESS: I have a copy of my report to refresh my memory.

JUDGE GRAHAM: Excuse me. I don't believe a predicate has been laid for her doing that yet. I would object to it.

THE CHAIRMAN: Judge, he does not need a predicate. Is this something that assists your memory?

THE WITNESS: Yes, sir.

THE CHAIRMAN: All right. You'll be able -- Judge Graham will be allowed to see that, to examine it, and cross-examine on the document if you so use it.

JUDGE GRAHAM: May I approach the bench?

THE CHAIRMAN: Mr. Bostic -- is this a sidebar conference?

JUDGE GRAHAM: Correct.

MR. BOSTIC: Oh, I'm sorry. I thought he was approaching the witness.

(Sidebar discussion.)

JUDGE GRAHAM: It's important to lay a predicate that a person has no current recollection, because it does, in itself, somewhat impeach their memory. And it is

required -- before they are allowed to look at something, they are supposed to lay a predicate.

THE CHAIRMAN: Lay your predicate.

JUDGE GRAHAM: They have to say, "I don't remember this now." "Will this help you?"

THE CHAIRMAN: You are correct.

(Sidebar discussion concludes.)

THE CHAIRMAN: The sidebar conference has led the Chair to reconsider its last ruling, and the objection, on the basis of the predicate, is going to be sustained, and I will not allow her to refer to that document until a proper predicate is laid.

BY MR. BOSTIC:

Q Do you have a present clear recollection of the events that occurred on March 15th of '92?

A Pretty much.

Q Then as I ask you your questions, let's -- if you will, just testify from your memory. If you can't recall something, would you first tell us you can't recall? Okay?

A Okay.

Q Now, I believe you said that you did the about-face, you turned around, you looked -- and

then what happened?

A Judge Graham then proceeded to tell me -- ask me if I realized that after he left the courtroom, that the three inmates in the jury box could jump Officer Briggs, take his handcuff key, take his weapon away from him, kill him, and no one would ever know it.

I said, "Yes, sir. I do realize that can happen."

Q Was Officer Briggs the officer who was on duty that day?

A Yes, sir. He was working transport.

Q Was Officer Briggs the only officer in the courtroom that day?

A Yes, sir.

Q And there were how many inmates?

A Three.

Q Anyone else in the courtroom other than three inmates?

A Just Judge Graham.

Q What was Judge Graham's response after -- what was your response -- I'm sorry. I don't think you said that.

You said that Judge Graham made his comment about jumping the officer and killing him,

and you said, "Yes."

A Yes, sir.

Q What happened next?

A He then proceeded to ask me why I only had one officer with first appearance, and I explained to him I was shorthanded that day.

Q What happened after that?

A He told me he was basically tired of hearing that we were shorthanded. He also said something to the effect we had a bailiff in the courtroom that stands there and does nothing all week anyway and gave me a direct court order to remove that bailiff from the courtroom and said that the next time that one officer showed up for first appearance that he would hold me in direct criminal contempt.

Q Did he tell you what he would do to you after holding you in direct criminal contempt?

A No, sir.

MR. BOSTIC: I have no further questions at this time.

CROSS-EXAMINATION

BY JUDGE GRAHAM:

Q Officer Amann, now you understand the importance of these proceedings, do you not?

A Yes, sir.

Q And you're telling this Commission that I gave you a direct court order to what?

A To hold me in contempt of court.

Q Isn't it true that you said I gave you a direct court order not to have the additional bailiff over there?

A Yes, sir.

Q And you're certain about that?

A Yes, sir.

Q Have you ever looked at a transcript of the proceedings that day?

A No, sir.

Q And isn't it true, Officer Amann, that you've left out one little thing, and that's about whether or not this request had been made before?

A To me?

Q Isn't it true that this -- the Court had requested through the deputies on prior occasions not to send over one deputy with more than one inmate. Isn't that true?

A I can't recall.

Q But you don't deny it, do you?

A I can't recall.

Q And isn't it true that the transportation

of three inmates by one deputy is a direct and clear violation of your own written policies?

A Yes, sir, it is.

JUDGE GRAHAM: No further questions.

MR. BOSTIC: I have no questions.

THE CHAIRMAN: Questions of the Commission?

Thank you very much for coming. You're released from the subpoena of Mr. Bostic. Is that correct?

* * *

DOCUMENT 50

Pages 179 - 183 of
Petitioner's Show Cause Response

Actual Transcription of the Court Proceeding for which Petitioner was, in part, Removed from Office.

This document is reprinted verbatim. However, incorrectly placed margins in the original document have been reformatted for easier reading.

PAGE 179

CHARGE 2 K

The Commission charged, and found that:

The Commission finds that on March 15, 1992, Respondent directed the bailiff in his courtroom to summon a supervisor from the Citrus County Sheriff's office to come to his courtroom to discuss court security. When the duty sergeant arrived, Respondent gave her instructions regarding the future security arrangements for his courtroom. Respondent then threatened to hold the deputy in contempt if the Sheriff did not comply with his

PAGE 180

instructions. Respondent's threatening conduct was an abuse of the power of his judicial office.

The clear and convincing evidence supporting this finding includes the undisputed testimony of Deputy Sheriff Kim Amann. (T. Vol. VI, pp. 1001-1011).

Based on the "undisputed" testimony of Deputy Kim Amann. Why not the transcription of the court proceedings so that the Court would know exactly what was said?? Perhaps because the exact words of the judge would sound much more reasonable than the version of Ms. Amann.

For the Court's benefit the proceedings are transcribed as follows:

PROCEEDINGS

THE COURT: Good morning, officer.

SERGEANT AMANN: (Inaudible)

THE COURT: Officer, are you in charge of the bailiffs this morning? The corrections officers?

SERGEANT AMANN: I was in charge of the jail, yes sir.

THE COURT: Okay. So what's your name?

SERGEANT AMANN: Sergeant Amann.

THE COURT: Sergeant Amann, I want you to look around this room. What do you see?

SERGEANT AMANN: Three inmates.

THE COURT: Three inmates. And what else do you see?

SERGEANT AMANN: And one officer.

THE COURT: And one officer. Now when I finish with first appearances, I'm going to get up and leave and then this officer, what's your name?

OFFICER BRIGGS: Briggs.

THE COURT: Officer Briggs is going to be in this room in this building with three prisoners and nobody else. There's not even a janitor in this whole building.

He's going to be totally, completely alone in this building with three prisoners and he has, do you have the keys to this guy's handcuffs?

OFFICER BRIGGS: Yes, sir.

THE COURT: And do you have a weapon?

OFFICER BRIGGS: Yes Sir.

THE COURT: Now do you know how easy it would be after I leave for these three guys to gang up on him, get him down on the ground, beat him senseless, or kill him with his own weapon, take the key and walk out of the door? Do you realize how easy?

SERGEANT AMANN: I realize that if they (inaudible).

THE COURT: It'd be just as easy. They could shoot him in this building and no one would even hear it outside on 41. He'd lay here head or dying for hours and the thing is you folks really don't know how many people are from Hernando or Sumter.

SERGEANT AMANN: That's right.

THE COURT: So you don't know how long he's going to be over here. There's no red flag. I have no idea how long it'd take before somebody would say, gee, where's Briggs? I wonder why first appearances are taking so long. Okay. Now it's got to stop. All right?

SERGEANT AMANN: Okay. I'll pass it on to transport sergeant.

THE COURT: Now I've told people this before.

SERGEANT AMANN: Okay.

THE COURT: Okay. Now I can't do anything about the other transport. Other people are in charge of that, but with you I can because you're here.

SERGEANT AMANN: Okay.

- PAGE 182 -

THE COURT: I'm going to give you a direct court order to never, ever allow one officer to come over here with more than one prisoner.

SERGEANT AMANN: Okay.

THE COURT: And I will hold you in contempt of court (inaudible). All right?

SERGEANT AMANN: Okay.

THE COURT: Now I'm not picking on you, all right, because the only reason I'm not saying that to the other ones, Okay, they're not here and they're not within my jurisdiction, and I haven't got a reason to do it.

SERGEANT AMANN: Uh-huh.

THE COURT: So that's the reason I'm doing it with you is I can tell you directly (Inaudible).

SERGEANT AMANN: Okay.

THE COURT: Because I'm not going to have somebody killed or hurt over here on weekend duty. All right?

SERGEANT AMANN: All right.

THE COURT: Okay. Gentlemen, step back over.

- PAGE 183 -

Ms. Amann, is there any reason why you didn't?

SERGEANT AMANN: I'm running short-handed today. Usually I do try to send somebody with first appearances but the transport squad is a different squad and they do the transports on weekends and first appearances.

THE COURT: So you're short on manpower?

SERGEANT AMANN: I'm short on manpower myself.

THE COURT: Okay. Let me say this. With the twelve million dollar budget that the Sheriff has, all right, this is the second time I've been told that a problem exists because the Sheriff's short on manpower. Last week I had a problem with finding out that there were arrests or holds on the defendants in County Court and Captain Moffatt came over here and told me she's short on manpower. Now you're telling me that you're short on manpower but I've got, Thursday and Friday of this week, Thursday and Friday of every week, I've got a Citrus County Sheriff's Deputy dressed in green who stands in this Courtroom and does absolutely nothing all day long except listen to Small Claims cases. Do you know what I'm talking about?

SERGEANT AMANN: (Inaudible)

THE COURT: The bailiff. The bailiff that's not needed because we have a Director of Courts. They insist on taking a man and put him over here to listen to Small Claims cases and then I'm told the Sheriff's short

on manpower. Take that fellow that's sitting here listening to Small Claims cases and have him do transport duty. That way nobody will get hurt and we'll stop wasting that much money. Okay?

SERGEANT AMANN: I'll pass it on, sir.

END OF THAT PORTION OF PROCEEDINGS

* * *

A 1128

DOCUMENT 51

Excerpts
from
Transcripts of the Proceedings

BY JUDGE GRAHAM:

Q Mr. Travis, would you state your name please for the Commission?

A Clifford Martin Travis.

Q And what is your occupation?

A I'm an attorney.

Q How long have you lived in Citrus County?

A I've been practicing law here in Citrus County for the past ten years.

MR. BOSTIC: Mr. Chairman, before we go forward -- Mr. Travis doesn't appear on the witness list, so I don't know the -- what charge or even broad area he relates to.

JUDGE GRAHAM: This is one of the attorneys that got his DUI case reduced to reckless.

THE CHAIRMAN: Well, is he listed on the pretrial as a witness either for the presentation that he gave me on Thursday or -- I don't see his name anyplace.

JUDGE GRAHAM: Sir, this goes directly to one of my -- one of the charges against me. This is one of the attorneys who got his DUI case dismissed and --

THE CHAIRMAN: Judge, I've told you that

I'm -- I've told you two or three times that I was only going to allow witnesses that are listed, and I can't violate my own rulings. And if he's not on the pretrial as a witness and he's not on any of your lists of witnesses that have been presented to us, I'm not going to allow his testimony. Is there anything else you have to present?

JUDGE GRAHAM: I hope the United States Supreme Court realizes --

THE CHAIRMAN: Judge, don't make comments to me, please. All right. You may stand down.

THE WITNESS: Thank you all very much.

JUDGE GRAHAM: I request that the Motion Committee rule on that and that the whole Commission decide whether or not that witness should be excluded.

THE CHAIRMAN: I have entered three orders on this Judge, and I'm not going to go through it again. And the Commission had ruled on this. This order went out. And I told you and I gave you ample warning that we were going to stay within the confines of those listed, and I'm not going to debate it anymore. If the

witness is not listed, we're not going to allow the witness to testify. Please proceed.

JUDGE GRAHAM: Can I respond to that at all?

THE CHAIRMAN: No, you may not.

JUDGE GRAHAM: Can I remind the Chair that Ms. Uzar was not listed and that Ms. Uzar -- Mr. Bostic was allowed to put on Ms. Uzar.

* * *

DOCUMENT 52

Excerpts
from
Transcripts of the Proceedings

NOTE: Following is the transcription of the case of *State v. Billy Dobbs Page* which is the entire evidence regarding Charge 3F for which Petitioner was, in part, removed from office (A 42).

For reasons unknown the JQC referred to the defendant by his middle name in its Findings (Compare A 42 with A 1133).

- PAGE 1176 -

* * *

THE CHAIRMAN: Okay. Let's proceed, then.

MR. BOSTIC: The exhibit that I intend to publish at this time, Mr. Chairman, is Exhibit 28-A. It is in the case of State of Florida versus Billy Dobbs Page, and it is allegation 3-F appearing on page 10. I do not have --

THE CHAIRMAN: Is this an audio type?

MR. BOSTIC: It's an audio tape. I do not have a transcript of the tape. . . .

* * *

- PAGE 1178 -

(Cassette tape is played.)

"THE COURT: Next case.

"MS. OSMOND: Judge, could we proceed on State vs. Densmore?

"THE COURT: We need to do Page and Parrish here first, and then we'll do Densmore. Okay?

"Are you Mr. Page?

"THE DEFENDANT: Yes, sir.

"THE COURT: Do you swear that the testimony you're about to give is the truth, the whole truth, and nothing but the truth, so help you God?

THE DEFENDANT: Yes, I do.

"THE COURT: Do you understand the rights which were explained to you in the videotape?

- PAGE 1179 -

THE DEFENDANT: Yes.

"THE COURT: You're charged with criminal mischief, a first-degree misdemeanor. How do you plead?

"THE DEFENDANT: Guilty.

"THE COURT: You need to sign a waiver.

"Sir, on the 28th of May, 1992, did you paint graffiti on the racquetball courts?

"THE DEFENDANT: Yes, sir, I did.

"THE COURT: Okay. I find there's a -- are you entering your plea of guilty because it's in your best interest?

"THE DEFENDANT: Yes, sir.

"THE COURT: I find there's a factual basis for your plea, you've made an (inaudible) intelligent waiver of rights, and I'll accept the plea.

"MS. OSMOND: I'd like to be heard on sentencing. There is a co-defendant in this case. The co-defendant was offered a withhold of adjudication, 50 hours of community service, $650 in restitution, and an apology to the (inaudible) Citrus County Chronicle. This defendant, however, has a prior record.

"THE COURT: The Citrus County what?

- PAGE 1180 -

"MS. OSMOND: Chronicle. They're sending a letter to the editor apologizing for the damage to the citizens of Citrus County.

"THE COURT: That's the fellow that went into the -- in the U.S. Army.

"MS. OSMOND: That's correct. He -- that was the next thing I was going to say.

"THE COURT: Well, that's the only reason he got that sentence.

"MS. OSMOND: Because he's going in the Air Force is why they stayed off with that.

"THE COURT: And you have a prior record. Right?

"THE DEFENDANT: Yes, sir. I'm currently on PTI.

"THE COURT: You're on PTI. Okay. You're not as lucky.

"MS. OSMOND: He's not eligible. He would not (inaudible). I was just telling the court what the co-defendant (inaudible).

"THE COURT: You're in a lot of trouble. Citrus County isn't going to become like New York City with all that vulgarity and rudeness and crud painted on everything. You're in a lot of trouble.

"What did he paint on the walls?

"MS. OSMOND: Pardon?

"THE COURT: What did he put on the walls?

"MS. OSMOND: He put -- the equipment and the buildings were vandalized with red paint, multi-colored paint, consisting of -- obscene, simple words and phrases were painted --

"THE COURT: What kind of words?

"MS. OSMOND: -- on the racquetball courts, parts of the sidewalk, and a portion of the West Educational (inaudible).

"THE COURT: What kind of words?

"MS. OSMOND: What's sprayed? It doesn't list.

"THE COURT: What kind of words did you paint on the walls?

"THE DEFENDANT: I just -- there was a bunch of us there that night, and the reason that we (inaudible) took the fall is our President -- principal said that we weren't going to walk.

"THE COURT: What did you put on the walls?

"THE DEFENDANT: I drew a wiener.

- PAGE 1182 -

"THE COURT: A wiener. What do you mean? A penis?

"THE DEFENDANT: Yes, sir.

"THE COURT: What else?

"THE DEFENDANT: And drew it outside.

"THE COURT: What did you write?

"THE DEFENDANT: 'Leave her with a shaved beaver.'

"THE COURT: 'Leave her with a shaved beaver.'

"Madame Clerk, adjudicate him. Place him on probation for one year. Sentence him to the county jail for six months. You're required to make restitution in the amount of -- of how much?

"MS. THOMPSON: Excuse me, Your Honor.

"MS. OSMOND: Six hundred and fifty dollars.

"THE COURT: Six hundred and fifty dollars. Step forward.

"MS. THOMPSON: These kids were told by the Citrus County Sheriff's Department if they admitted to what they did and took the blame, they wouldn't be punished, and two weeks later they got subpoenaed. What he did and Chris did

- PAGE 1183 -

is nothing that every other senior doesn't do at every high school for the past 20 years. They did not hurt anybody. They are not criminals. And they admitted to doing it because they were told that things would go easy. And you call six months in jail for somebody who just graduated from high school?

"THE COURT: Do you know what his problem is? His problem is you.

"MS. THOMPSON: Oh, is it?

"THE COURT: Yes. It's not me, it's you. That's how he wound up -- how old are you?

"THE DEFENDANT: Nineteen.

"THE COURT: That's how he wound up, at 19 years old, painting male penises on public property and saying 'Leave her

with a shaved beaver.' And I can tell that by the way you're defending him.

"MS. THOMPSON: I'm defending all --

"THE COURT: I'm -- I'm --

"MS. THOMPSON: -- the seniors at the

There was 40 kids out there, and the Sheriff's Department --

"THE COURT: Ma'am, let me tell you something.

- PAGE 1184 -

"MS. THOMPSON: -- has every one of their phone numbers and names, and they never took them in.

"THE COURT: Ms. Osmond, were you a senior in high school?

"MS. OSMOND: Yes.

"THE COURT: Did you graduate?

"MS. OSMOND: Yes.

"THE COURT: Did you paint male penises on walls?

"MS. OSMOND: I would never consider that.

"THE COURT: Ms. Mallet --

"MS. MALLET: Yes, sir.

"THE COURT: -- were you a senior in high school?

"MS. MALLET: Yes, sir, I was.

"THE COURT: And as a part of your duties as a senior in high school, did you go out and write Leave it -- 'Leave her with a shaved beaver' on walls?

"MS. MALLET: No, Your Honor.

"THE COURT: How many seniors do we -- everybody who's been a senior in high school, would you please stand up?

- PAGE 1185 -

"Let's see. There's -- one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two -- twenty-three people in this courtroom -- twenty-three, twenty-four -- twenty-five people in this courtroom who have been a senior in high school. Okay?

"Now, would every senior in high school who painted a penis on a public building please sit down. Notice that no one sat down.

"A VOICE: I wasn't a senior.

"THE COURT: You didn't. You didn't.

"A VOICE: I wasn't a senior.

"THE COURT: Okay. Let the record reflect that we've got lots of seniors in this building who have not engaged in this conduct. You may all be seated.

"Ma'am -- what is your name?

"MS. THOMPSON: Chris Thompson.

"THE COURT: Trust me. The public desecration of public facilities with obscenities and vulgarities is not an accepted rite of passage even in today's society.

"Next case."

- PAGE 1186 -

(Cassette player is turned off.)

* * *